

THE
PROCEEDINGS AT LARGE
OF THE
COURT-MARTIAL,
ON THE
TRIAL
OF

The Honourable AUGUSTUS KEPPEL,

ADMIRAL of the BLUE.

Held on Board his Majesty's Ship the BRITANNIA,

On Thursday, January 7th, 1779.

And adjourned to the House of the GOVERNOR of PORTSMOUTH, and held there
till Thursday, February 11th, when the ADMIRAL was HONOURABLY ACQUITTED.

TAKEN IN SHORT HAND, by W. BLANCHARD,

FOR THE ADMIRAL,

AND PUBLISHED

BY HIS PERMISSION.

LONDON:

Printed for J. ALMON, opposite Burlington-House, PICCADILLY.

MDCCLXXIX.

[PRICE SIX SHILLINGS.]

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T R I A L O F A D M I R A L K E P P E L.

The First Day's Proceedings, Jan. 7, 1778.

A Signal being made for the Admirals and Captains of his Majesty's Fleet then at Spithead and Portsmouth, to come on board his Majesty's ship the *Britannia*, lying in Portsmouth harbour.—When they were assembled, the names of the Admirals and Captains on board, according to their rank and seniority, were called over by George Jackson, Esq. the Judge Advocate, till a sufficient number answered to their names to compose the Court, except those who had been summoned to give evidence on the trial; when Captain Walsingham said his name was not called over (and a younger officer's was) though his ship was there; upon which the Judge Advocate, as the objection was made, said he must read the case he then had in his hand to the Court.

The 22nd of Geo. II. Chap. 33. Sect. 11. enacts,
 "That from and after the 25th Day of December, 1749, it shall be lawful for the said Lord High Admiral of Great Britain, or the Commissioners for executing the Office of Lord High Admiral of Great Britain; or the Commissioners for executing the Office of Lord High Admiral for the Time being, and they are hereby respectively authorised from Time to Time, as there shall be Occasion, to direct any Flag Officer or Captain of any of his Majesty's Ships of War, who shall be in any Port of Great Britain, or Ireland, to hold Courts Martial in any such Port, provided such Flag Officer or Captain be the first, second, or third in Command, in such Port as shall be found most expedient and for the Good of His Majesty's Service; and such Flag Officer or Captain, so directed to hold Courts Martial, shall preside at such Court Martial; any Thing herein contained to the contrary notwithstanding."

Sect. 12th. "That from and after the 25th of December, 1749, no Court Martial to be held or appointed by Virtue of this present Act shall consist of more than Thirteen, or of less than Five Persons, to be composed of such Flag Officers, Captains, or Commanders then and there present, as are next in Seniority to the Officer who presides at the Court Martial."

Notwithstanding the Words in Italic in the 12th Section, the Usage at Courts Martial has been, for Officers who have given Evidence at the Trials, not to sit as Members of the Courts; although they were senior to others who sat, and consequently would have sat as Members if they had not been examined as Witnesses.

The Lords Commissioners of the Admiralty having lately received a Complaint in Writing, charging an Officer of Rank in the Royal Navy, with one of the Offences specified in the Articles of War, which are created and set forth by the above mentioned Act of Parliament; their Lordships have therefore thought fit to issue their Order, or Warrant in Writing, to Admiral Sir Thomas Pye at Portsmouth, requiring him forthwith to assemble a Court Martial for the Trial of the said Officer. And it having been suggested to their Lordships that several Officers and Commanders of the King's Ships at Portsmouth (who, on Account of their Seniority must sit as Members of the said Court Martial, if the Letter of the 12th Section in the said Act is conformed to) will be summoned as Witnesses, either in Support of the Charge or in Behalf of the Accused,

You are therefore requested to advise their Lordships, Whether in Case such Senior Officers should be called upon to give Evidence at the Trial, they may likewise sit as Members of the Court Martial?—And also,

Whether the Court can be legally held without the senior officers (who shall happen to be called upon to give evidence) in case it is necessary for their juniors to sit as members, in order to make up the number required by the Statute to constitute a Court?

"The usage of the service is very material upon this case, for Naval Courts-Martial are evidently considered in the Statutes concerning them, as known and established Courts, consequently in matters not especially provided for, the settled course of proceedings must have great weight.—That the characters of witness and judge are not consistent; is very obvious; and though in the Common Law of England there is no challenge to a Judge, yet in the only instance we know where Judges were called upon to give evidence in a criminal case, [*Kelyng's Rep. 12.*] it is observed, That they sat no more during that Trial.—By a strict and literal construction of the Statute of the 22d of Geo. II. chap. 33, s. 12, neither the prosecutor, nor the prisoner, would cease to be judges.—But this construction would be absurd; and the act must from common sense admit as the usage is, That officers to whom there is a just ground of exception, or who have a just ground of excuse, shall not be included in the number of those of whom the Court is to be composed; consequently if any officer entitled by his rank to sit, is either prosecutor, party, or witness, the person

next in seniority must supply his place and the Court so composed, will be legally held according to the intent of the act.

AL. WEDDERBURN.

JA. WALLACE.

F. C. CUST".

Then the Judge Advocate read the order sent by the Lords of the Admiralty to Sir Thomas Pye, Admiral of the White, to hold the Court-Martial, dated the 31st December 1778, signed Sandwich, T. Buller, Lisburne, and for adjourning to the Governor of Portsmouth's House.

The following members were then sworn, agreeable to Act of Parliament,

PRESIDENT, Sir Thomas Pye, Admiral of the White.

Matthew Buckle, Esq; Vice-Admiral of the Red,

John Montagu, Esq; Vice-Admiral of the Red,

Marriot Arbuthnot, Esq; Rear-Admiral of the White,

Robert Roddam, Esq; Rear-Admiral of the White,

Captains M. Milbank	William Bennet
Fra. Sam. Drake	Adam Duncan
Taylor Penny	Philip Boteler
John Moutray	James Cranston

Then the Judge Advocate was sworn not to disclose or discover the opinion of any particular member of the Court Martial, unless thereunto required by Act of Parliament.

The Court was then adjourned to the House of the Governor of Portsmouth, when the President desired the Judge Advocate to read the Charge:

The Judge Advocate then read Sir Hugh Palliser's letter to Philip Stephens, Esq. Secretary to the Admiralty, dated London the 9th of December, 1778, desiring the Lords Commissioners of the Admiralty to order a Court Martial to be held for the Trial of the Honourable Augustus Keppel, Admiral of the Blue, for misconduct and neglect of duty on the 27th and 28th of July, 1778, as mentioned in the inclosed paper containing the Charges against him.

The Charge was then read as follows :

A Charge of Misconduct and Neglect of Duty against the Honourable ADMIRAL KEPPEL, on the 27th and 28th of July, 1778, in divers Instances un-dermentioned.

I. That on the morning of the 27th of July, 1778, having a fleet of thirty ships of the line under his command, and being then in the presence of a French fleet of the like number of ships of the line, the said Admiral did not make the necessary preparations for fight, did not put his fleet into a line of battle, or into any order proper either for receiving or attacking an enemy of such force : But on the contrary, although his fleet was already dispersed and in disorder, he, by making the signal for several ships of the Vice-Admiral of the Blue's division to chace to windward, encreased the disorder of that part of his fleet, and the ships were in consequence more scattered than they had been before, and whilst in this disorder, he advanced to the enemy and made the signal for battle.

That the above conduct was the more unaccountable, as the enemy's fleet was not then in disorder, nor beaten, nor flying, but formed in a regular line of battle on that tack which approached the British fleet (all their motions plainly indicating a design to give battle), and they edged down and attacked it whilst in disorder : By this un-officer-like conduct, a general engagement was not brought on, but the other Flag-officers and Captains were left to engage without order or regularity, from whence great confusion ensued,

some of his ships were prevented getting into action at all, others were not near enough to the enemy, and some from the confusion fired into others of the King's ships, and did them considerable damage, and the Vice-Admiral of the Blue was left alone to engage singly and unsupported. In these instances the said Admiral Keppel negligently performed the duty imposed on him.

II. That after the van and center divisions of the British fleet passed the rear of the enemy, the Admiral did not immediately tack and double upon the enemy with those two divisions, and continue the battle, nor did he collect them together at that time, and keep so near the enemy as to be in readiness to renew the battle as soon as it might be proper, but on the contrary he stood away beyond the enemy to a great distance before he wore to stand towards them again, leaving the Vice-Admiral of the Blue engaged with the enemy, and exposed to be cut off.

III. That after the Vice-Admiral of the Blue had passed the last of the enemy's ships, and immediately wore and laid his own ship's head towards the enemy again, being then in their wake and at a little distance only, and expecting the Admiral to advance with all the ships to renew the fight, the Admiral did not advance for that purpose, but shortened sail, hauled down the signal for battle, nor did he at that time, or at any other time whilst standing towards the enemy, call the ships together in order to renew the attack as he might have done, particularly the Vice-Admiral of the Red, and his division, which had received the least damage, had been the longest out of action, were ready and fit to renew it, were then to windward and could have bore down and fetched any part of the French fleet, if the signal for battle had not been hauled down, or if the said Admiral Keppel had availed himself of the signal appointed by the Thirty-first Article of the Fighting Instructions, by which he might have ordered those to lead who are to lead with the starboard tacks on board by a wind, which signal was applicable to the occasion for renewing the engagement with advantage after the French fleet had been beaten, their line broken, and in disorder. In these instances he did not do the utmost in his power to take, sink, burn, or destroy the French fleet, that had attacked the British fleet.

IV. That instead of advancing to renew the engagement, as in the preceding Articles is alleged, and as he might and ought to have done, the Admiral wore and made sail directly from the enemy, and thus he led the whole British fleet away from them, which gave them the opportunity to rally unmolested, and to form again into a line of battle, and to stand after the British fleet : this was disgraceful to the British flag, for it had the appearance of a flight, and gave the French Admiral a pretence to claim the victory, and to publish to the world that the British fleet ran away, and that he pursued it with the fleet of France, and offered it battle.

V. That on the morning of the 28th of July, 1778, when it was perceived that only three of the French fleet remained near the British, in the situation the whole had been in the night before, and that the rest were to leeward at a greater distance, not in a line of battle but in a heap, the Admiral did not cause the fleet to pursue the flying enemy, nor even to chace the three ships that fled after the rest ; but on the contrary, he led the British fleet another way, directly from the enemy.

By these instances of misconduct and neglect, a glorious opportunity was lost of doing a most essential service to the state, and the honour of the British navy was tarnished.

H. PALLISER.

The

The Prosecutor then desired the masters of the ships might produce their log books.

The Admiral desired they might be left on the table, from the beginning to the end of the trial.

The Prosecutor then objected to their lying on the table.

After a short debate the Court adjourned till the next day, January 8th, 1779, and postponed giving any opinion upon the objection till then.

The Second Day's Proceedings, Jan. 8, 1779.

The Judge Advocate having again read the Charges exhibited against the Honourable Augustus Keppel, Admiral of the Blue. The resolution of the Court was then read, That every master should produce the log-book of the ship to which he belonged, and that such log-book should lay upon the table.

Court. You must swear them as they bring their log-books.

The following form of an oath was tendered to the different masters, as they produced their log-books, several being sworn together.

"You severally swear that the book you have delivered in is the ship's original log-book, kept from day to day, containing the very first entries that were made therein, and is without any alteration or any addition made therein, so far as respects the 23d, and to the 30th of July, 1778, both days inclusive".

— Searle, the Master of the America, could not produce the original log-book, but gave in the following evidence to the Court:

This is a copy of the ship's log-book; the ship is gone to sea, and the ship's log-book is in the ship.

Court. What is it you give in?

A. An exact copy, I took it from the original myself.

Q. Is it your own writing?

A. Yes.

Q. So that you can swear to its being a correct copy made by yourself of the original log-book?

A. Yes.

Judge Advocate tendered the following oath:

"You swear the book you now deliver in is an exact copy made by yourself of the original log-book, kept on board the America, from the day when the first entries were made therein, and is without any addition or alteration since made, so far as respects the 23d, and to the 30th of July, 1778, both days inclusive, so help you God.

A. Yes.

Several other masters being called, and the oath tendered to them, one of them said, I cannot swear that it is without alteration, as we have had some alterations made.

Court. What is your name?

A. Arnold. The Captain did not think the log-book circumstantial enough, and desired some alterations might be made, for which reason I cannot take the oath.

Q. What is the name of the ship?

A. The Robuste, I say some alteration has been made in the log-book (since the 23d) of the Robuste.

Court. How long ago, to the best of your knowledge?

A. I believe ten or fourteen days.

Q. Has it been made since it was known Admiral Keppel was to be tried?

A. I believe it has, Sir, the facts I can swear to.

Prosecutor. Are they additions or alterations?

A. There are some additions.

Q. Have you the original state besides the present one, with the alterations to produce?

A. No, Sir, I believe I can recollect the parts that have been altered.

The book was then delivered back to him, but the Court desired it to be immediately returned, and put upon the table again.

Sir Thomas Pye. (To the Judge Advocate) As the Prosecutor has asked some questions of the Master of the Robuste, you will now ask him such questions as Mr. Keppel desires to ask him.

Judge Advocate. He is not yet sworn.

The following oath was then administered to the Master of the Robuste:

"You swear you will declare the truth, the whole truth, and nothing but the truth, to such questions as shall be asked of you, relative to the present trial."

Court. As the man is now sworn, is it not right Sir Hugh Palliser should ask the questions again?

Prosecutor. I desire to know whether the reasons for objecting to take the oath upon account of the log-book not being in its original state, was from alterations or additions made.

A. From both.

Prosecutor. I don't mean to ask any other question.

The Admiral. I would ask whether the alterations and additions, whatever they are, have not been made since it was known I was ordered to be tried.

Judge Advocate. The question is, if both alterations and additions were made since it was known Mr. Keppel was to be tried?

A. I don't exactly recollect the time, as I said before, when they were taken, but to the best of my recollection they were made, some of them, since it was known the Admiral was to be tried.

The Admiral. This is a matter very necessary to be inquired into; I would ask by whom, and by whose order those alterations were made?

A. By the order of Captain Hood.

Q. From whom did you receive that order?

A. From the Captain himself.

Q. Were the alterations made by you or the Captain?

A. They were dictated by Captain Hood.

Court. And made by you?

A. And copied into the log-book by one of the mates, Sir.

Q. Copied from what?

A. From the alterations that the Captain thought was necessary.

Q. Were those alterations given you in writing to enter into the book, or was it verbally?

A. Some were in writing, and some verbal.

Q. Did you refuse inserting them, or not?

A. No, Sir, I could make no objection to a thing of that kind, as it was the Captain's orders.

Q. I understand that the Mate, and not you, wrote it down?

A. I did not write it down, but it was by my directions to the Mate.

Q. Were any other officers present?

A. I believe the first Lieutenant was present at one time, I don't know whether he was always.

Q. What was the Mate's name?

A. Cooper.

Q. Thomas or John?

A. I think his name was John.

Q. Was the Mate who marked the log-book the officer that usually entered it.

A. He always had the care of the log-book.

Court. Where was that alteration made, and in whose presence?

A. I believe the first Lieutenant was present.

Q. Where was it?

A. In the great cabin of the Robuste.

Q. In the presence of the first Lieutenant and Captain?

A. Yes, Sir—I mean to be understood in the Captain's apartment.

[The evidence read over to the witness by the Judge Advocate from his notes—to which the witness did not object.]

Court.

Court. Did Captain Hood see the original log-book as wrote from the day of the engagement to the 31st of July?

A. The Captain always saw the log-book every day.

Q. Did the Captain see the original log-book from the day of action to the 31st of July?

A. The Captain when at sea sees the log-book every day.

Q. What is the first Lieutenant's name?

A. Inglefield.

Q. Did you, from the day of the action till you arrived at Plymouth, ask the Captain if he approved of that day's work relative to the action?

A. Yes, Sir, it was drawn out upon rough paper, and presented to the Captain before it was put into the log-book; it had his approbation before it was put into the log-book.

Q. Do you mean the day of the action, or before or after?

A. The 27th and 28th of July.

Q. Did Captain Hood make out the minutes for any other day but the day of action, because it is particularly fixed for the day of action?

A. There were no alterations but the 27th.

Court. The question as I understood, was, whether it was by the approbation of the Captain that it was inserted in the log-book the 27th and 28th of July—what was the answer?

A. The Captain very frequently found it necessary to add, and to interline in the log-book the omissions that had been made upon the other days.

[Several other Masters called, delivered in their books, and were sworn to their authenticity.]

Mr. Stevenson said he had notice from the Navy-board to attend, and a subsequent notice not to attend, and therefore had not brought his log-book.

Q. What ship?

A. The Elizabeth. I have my own log-book at home, which is a true copy of it.

The Master of the Thunderer sworn; said he had brought an exact copy.

Court. Made by whom?

A. It was wrote by the Mate, Sir: I was present at the time of making it, and know it to be an exact copy.

Q. You examined it?

A. I compared every word, and there is not the least difference; the old one was too small.

Judge Advocate. He says it is a copy of the original log-book made by the Mate, but he has examined it with the Mate, and it is correct.

A. Yes, Sir, the old one was too small to hold it, and therefore I transcribed it into a fair book.

Q. When was it done?

A. It was begun about three months ago.

Q. Is that the log-book you kept of the day of action?

A. It is a copy of every thing in the original log-book.

The witness was then sworn. You swear it is an exact copy without any alteration or addition, so far as respects the 23d of July to the 30th of July, 1778, inclusive?

A. Yes, Sir.

Q. Where is the original?

A. I have it about me.

Q. Produce it?

A. Here it is.

Prosecutor. I beg I may have permission to have access to those log-books always, as they contain a variety of matter, which I am at present uninformed of.

The Admiral. I must object to such a requisition, I disclaim any desire of the same sort: I, as a prisoner, am upon the same footing with that

gentleman; he wishes to search these log-books, thinking there may be matter for him to form more accusations upon; he is to go only upon the matter he has before alledged; when the Masters are re-heard as to the log-books, he will have a full opportunity of examining them; as they are brought safe into the custody of the Court, they ought to be made no use of at all, till the parties are examined to them.

Prosecutor. I only beg leave to say it is not for obtaining matter for any additional charge, I declare I do not mean any thing of that sort.

President. The Prosecutor desires he may be indulged with leave to have recourse to the log-books upon the table?

Admiral Montagu. I look upon it when once the Court is in possession of a paper of any kind, it has never been parted with; it remains amongst ourselves how far you will indulge the Prosecutor, I will not say myself, but I only speak of what I remember of former Courts Martial. I remember sitting upon the Trial of a noble Lord in this Court formerly; all the log-books were brought to the table, and never parted from, nobody had a right to look into them but the Court-Martial.

The Court then agreed to determine upon the question among themselves, after the adjourning of the Court, and to deliver in their opinion the next morning.

The Admiral. When the log-books are examined into, I shall want to see them undoubtedly.

The Court then desired the witnesses to withdraw, and the Judge Advocate to read to the audience the names of the witnesses that were to be called to day.

Judge Advocate. The evidences proposed to be examined to day, are, Captain Marshall, Captain Sutton, Sir William Burnaby, Captain Windfor, Captain Digby, Captain Hood, and Sir John Hamilton.

The first Witness, Capt. SAMUEL MARSHALL was called, and the following oath tendered unto him:

"You swear that you will declare the truth, the whole truth, and nothing but the truth, to such questions as shall be asked of you relative to the present trial. So help you, God."

Captain Marshall. I shall be glad to see one line of the charge.

The Charge shewn him from the original.

Prosecutor. I desire Captain Marshall may be asked, when the French fleet was first discovered?

President. Look to your minutes, and tell the Court when the French fleet was first discovered?

A. About half past two.

Prosecutor. What day, Sir?

A. The 24th of July. We did not see the fleet so soon as other ships might, all the ships might see them sooner than us.

Q. At what time was it?

A. I cannot say the exact time upon the 24th, as I understood the charge was the 27th. I was not prepared with other minutes.

Q. Were the French fleet during that afternoon to the windward of the British fleet, or to the leeward, or how otherwise situated?

A. I was far a-stern, and not in my station, when the signal was made for a strange fleet; I immediately repeated my signals, and did my utmost to get into my station. I am not prepared to that day, this is to the best of my recollection only.

Court. The charge is only the two days the 27th and 28th; prior to them he did not expect to be called upon, he says?

Witness. I did not expect to be called upon, and therefore was not prepared.

Q. You

Q. You don't give any account till the 27th?

A. No, Sir.

Prosecutor. According to the best of your recollection, and the observation you then made relative to the French fleet, I presume you did not totally neglect taking notice of them; I desire you will please to inform the Court how did they appear to be employed that afternoon? was it in preparing the line of battle, or what other way?

A. I did not look to them, I was too much in my duty.

Q. Was it in forming the fleet in a line of battle, or in what other way?

A. I was endeavouring to get into my station, and repeating the signals, and had not an opportunity to examine, nor do I believe I could have seen.

The Admiral. I apprehend there can come no charge to me till the 27th, but I have no objection to his being asked about the other days.

Prosecutor. I understand you confined your knowledge to not having taken any particular notice of the fleet during the afternoon; I was asking him if towards night he did not see, when I presume he did come up.

The Admiral. I beg you will be so good as to put strait questions, and not presume he was here or there.

Prosecutor. In the afternoon did not he take notice, I would ask—in the afternoon, how was the French fleet standing, was it towards, or from the British fleet?

A. This was the 24th, the evening of the first day, at seven or eight o'clock at night.

Q. How was the French fleet standing about seven or eight at night, was it towards, or from the British fleet?

A. I wish I had been better prepared for this day; to the best of my recollection we had our larboard tacks on board; several ships a press fail upon them, many signals were repeated and made; I believe the French fleet had their starboard tacks on board, my whole attention was to the flags to repeat their signals; having so much to do with signals, I cannot speak so well to the facts as I could wish.

Q. About eight o'clock, did or not the King's fleet bring too upon the larboard tack by signals?

A. I wish I had been more perfect in this, the 27th I have been very perfect in; may I be allowed to look at my signal book?

Court. Yes.

Captain Marshall. We brought too that evening.

Prosecutor. About what time, Sir, was it by signal?

A. Upon my word I don't know the signal for bringing too.

Q. Do you recollect what hour they were brought to?

A. I do not.

Q. Was it by day light?

A. It was in the evening.

Q. From your log-book it must appear?

A. Our ship sailing faster than the fleet, my log-book will be very little direction to me; at this time I know not the signal for bringing the fleet too.

Q. Whether there was not a signal made for the Commander of the third post to bring too upon the larboard tack, and the whole fleet brought too accordingly?

A. I have every signal drawn out.

Court. We want to know whether the fleet brought too?

A. The fleet brought too, I don't know the signal to bring the fleet too.

Prosecutor. Was the signal for the Commander of the third post between seven and eight.

A. The flag if you please, and I will tell you.

Prosecutor. It is a Blue flag at the mizen-top-mast-head?

The Admiral. What he says is literally true, I should wish him to be perfect in it.

Prosecutor. Was the wind at that time about west and by north, or west north west, or how was it?

A. At that time, Sir.

Q. Aye?

A. We had the wind at west and by north; we had the wind at west at half past three, and not altered till night.

Admiral Montagu. Capt. Marshall's evidence is from the log-book, it is not his evidence.

Capt. Marshall. I say that I came not prepared for any other day than the 27th.

Admiral Montagu. I would not lead Capt. Marshall into an error, the bye-standers must understand Capt. Marshall is not swearing to his own knowledge, only from the log-book.

Prosecutor. Capt. Marshall being in a frigate, whose place it is, with regard to making signals for the operations of the fleet, is of course a prepared person to speak to this pointedly.

Admiral Montagu. He certainly ought to be, but does not seem to be so.

Capt. Marshall. I beg the question, if you please, Sir Hugh.

Prosecutor. By the log-book he says the wind was at west that whole afternoon, and he speaks from the log-book.

President. Did you inspect the log-book from day to day; look at that log-book to refresh your memory?

A. I did not always, I very frequently do, unfortunately I lost my master, who would have been my help upon this occasion. I have a gentleman who took minutes upon the affair of the 27th, and will witness it.

Prosecutor. I am speaking of the evening about eight o'clock; was the French fleet then to the best of your recollection to leeward, or how otherwise situated from the British fleet?

A. About eight, that night, Sir?

Q. Or about ten o'clock that night.

The Admiral. I don't know whether I am right in interrupting, but as he has been two or three times called upon to repeat the thing, and not being prepared,—I submit whether it may not be better he should retire to make himself master to answer the accuser's questions. Capt. Marshall is only come fully prepared, I presume, to answer to the 27th, and 28th instant, the two days the accusation has mentioned, and it may appear Capt. Marshall has not been regular in making those signals—the part he was particularly stationed to.

Court. Do you wish him to withdraw to recollect himself?

The Admiral. As he was the repeater of signals, and as he came only prepared for the 27th and 28th, it may now appear to all the hearers he is ignorant of the matter; and I am sure when he looks at his notes, it will appear it is a thing he could not be ignorant of, because he was a very exact repeater of signals. I will leave it as you think proper, it is taking up your time to a matter he could answer better from his notes.

Several of the Court Martial were of opinion it was no part of the Charge, and though the Admiral made no objection, they would, as it would otherwise lose so much time—there is an accusation of the 27th and 28th, why are we to begin the 23d and 24th?

Prosecutor. That accusation is very much affected by the circumstances that happened during the other days, and Admiral Keppel himself agrees to that, and does not object to going into the substantial account of those days.

The Admiral. It is taking up your time, I have no objection to the accuser's going into every

one of those days, but only you are losing a great deal of time upon the matter the Gentleman does not come prepared for.

A Member of the Court. Though you have no objection I have, because it is not before us.

The Admiral. It may be necessary to know what passed upon the preceding days to bring those of the 27th and 28th before you.

Prosecutor. I postpone the examination of Captain Marshall so far as relates to the 23d and 24th, understanding it is the wish of the Court to know what relates to those days, and shall call him again with the indulgence of the Court. What I think proper to ask Captain Marshall upon the 27th is, In what situation, and what distance was your ship from the Victory at six in the morning upon the 27th of July?

A. Nearly in her station, rather abaft the Admiral's beam.

Q. Weather beam or lee?

A. The weather beam always.

Q. What distance.

A. Nearly in her station, about three or four miles off.

Q. Were not the ships of the British fleet at that time much extended, scattered, and dispersed?

A. There were some ships of the Blue division to leeward, and the Red division to windward upon the weather quarter.

Q. Rather to windward?

A. Yes, they were so.

Q. You don't seem to understand the meaning of the question right, was not the fleet scattered, was not some considerably to leeward more than others, and some to the windward more than others, and extended from van to rear at extraordinary distances?

A. Yes, there were distances to be sure, some ships were farther to leeward than others.

Q. And some to windward.

A. And some to windward.

The Admiral. I beg you will put the questions properly and not suggest.

Prosecutor. I asked it in the same questions, whether the fleet was not extended, scattered, and dispersed; the first answer speaks to no one of those three points, therefore I took upon me to explain to the evidence what I mean to obtain his answers to.

Court. His answer is some ships to leeward of the Blue division, and the Red division was upon the weather quarter.

Prosecutor. He said nothing about distances.

Judge Advocate. Were not some considerably more to windward than others, and others to leeward?

A. In the morning they were.

Q. Do you remember a signal being made on board the Victory in the morning of the 27th of July, for several ships, particularly the Vice-Admiral of the Blue's division, to chase to windward?

A. I do remember it very well.

Prosecutor. The latter part of the question is, at what time, and name what ships.

The Admiral. I beg he may answer that question first.

Prosecutor. I understood he said he remembered that very well.

The Judge Advocate reads the question again; your answer, Sir?

A. Yes, it was not a signal I repeated, I have not taken it down, I remember a signal being made.

Q. Several signals?

A. Several, but the time I object to as I did

not repeat it, it was not a signal I repeated at all.

Prosecutor. Whether he remembers there was such a signal made?

A. I have a note that there was such a signal made, but I have no note of the time.

Q. Can he speak to the names of any of the ships the signals were for?

A. No.

Q. Please to inspect your log-book, see if it is there?

A. It is not in the log I dare say; they are not in the log, but I imagine it was the Blue division.

Q. As he has said there were signals made, I would ask if he took notice of the number of ships making sail and chasing in consequence of that signal?

Q. You are speaking of the Vice-Admiral?

A. Yes.

The Judge Advocate repeats the question.

A. Some ships, the number I know not.

Q. Did not those ships chase in consequence of that signal; and did not that cause those ships to be separated from their flag, and become more scattered than they were before.

A. I cannot be a judge of that, I was to windward.

Q. Being to windward, and the signal made for the ships to chase to windward, and you seeing them chase, I should like to know whether or not it did not appear to you it caused them to be more spread and separated from their flag than they were before?

No answer.

Q. You saw the signal for them to chase.

A. I did.

Q. Yourself to windward.

A. Yes, and those ships were to leeward, many people may form different ideas of the intention of that signal.

Q. As to the intention I am not asking, but only asking of the effects of what did arise from it?

Judge Advocate. Whether it did or not cause them to be more scattered than they were before?

A. Those ships that sail best must increase their distance most, that is certain.

Court. In answer to one of the questions he said, he did not attend to the manœuvres of the fleet, but his constant eye and attention was upon the Admiral, whose signals he was to repeat.

A. It was really, Sir, I may almost say entirely.

President. If you do not know, you had better say so.

A. I have said so.

Admiral Montagu. The question Sir Hugh asks you is very fair, and a fair answer is to be given, yes, or no; if you know you will tell, if not you will say no.

A. I don't know when those ships tacked, I cannot give a perfect answer.

Prosecutor. I am only desirous for Captain Marshall to answer as far as he is able.

President. To be sure they were separated as one made more sail than another.

Judge Advocate. Whether it did, or not, cause them to be more spread and scattered than they were before?

A. I do not know when the ships tacked.

Prosecutor. Was not the British fleet then standing upon the larboard tack, till the signal was made for the British fleet to tack all together.

A. They were.

Q. And at what hour was such signal made?

A. At

A. At half past ten by my time, but I am very erroneous as to time, and I don't know that others were true to time.

Q. Soon after the fleet tacked was not the French fleet discovered to windward, approaching towards the British fleet upon a contrary tack in a regular line of battle a-head, that is they upon their larboard tack, and we upon our starboard tack.

A. We did not observe them either upon the line of battle a-head, or upon the contrary tack, till just before the firing began a-head.

Q. At that time they appeared to you to be upon the contrary tack, and in a line of battle, you say?

A. No.

Q. He says he did not see them upon the contrary tack as I understand, or in a line of battle till the time the firing began a-head.

A. I put a full stop to the line of battle, Sir.

Judge Advocate. The answer stands with his own correction, we did not observe them in a line of battle, nor upon the contrary tack till just before the firing began a-head.

Prosecutor. At what time did he discover them to be in a line of battle, if not at that time?

A. Before they laid their heads the other way in the morning.

Q. How long?

A. As they were standing upon the same tack that we were, they appeared to me to be in a line of battle; whether they were, or were not, I am not certain.

Q. At what time do you speak of?

A. I speak before the time of tacking, they laid their heads the other way, if I mistake not, (Sir Hugh) before us; when they had their larboard tacks on board before we tacked, then I think they were in a line of battle; after they stood the other way I know not, I am speaking about or before ten; when they tacked to us again what the disposition of the fleet was I do not know.

Q. Do I understand you right, that you are speaking of a time back early in the morning, before the fire began?

A. Yes—because I am asked when I did discover them in a line of battle?

Q. Yes.

A. I did not discover them in a line of battle after they came about again, after our Red division fetched near, the ships were much intermixed.

Judge Advocate. The question is at what time did you discover them to be in a line of battle; the answer is, before they laid their heads the other way.

Captain Marshall. That will not do, please to put it when they had their larboard tacks on board.

[The Court desired Captain Marshall's evidence to be read to him that he might be thoroughly satisfied.]

Prosecutor. That was prior to the firing.

A. Oh! Yes, Sir, the French fleet was upon the larboard tack.

Court. You had better speak to time;—you said in one part you did not discover it in a line of battle till just before the firing began.

A. God bless you, Sir, they were upon the larboard tack in the morning, they tacked and we tacked after that, and the first I saw of them was just before the firing began; the question to me is whether they were in a line of battle.

Judge Advocate. The question is soon after the fleet tacked, was not the French fleet discovered to windward, approaching towards the British fleet upon the contrary tack, in a regular line of battle a-head, and at what time; the

answer to the first part is, I did not discover them in a line of battle, nor upon the contrary tack, till just before the firing began, when they had their larboard tacks on board, prior to the firing.

Admiral Montagu. Did you discover the French fleet in a line of battle before the British fleet began to engage with them?

A. In the morning, I say.

Q. What time did they engage.

A. About eleven, or a little after.

Q. Then you saw them before they engaged?

A. They had been in a line of battle and tacked from us.

Admiral Montagu. I will explain it to you; in the morning the French fleet was to the windward of the British fleet with their larboard tacks on board, the British fleet with the contrary tack.

Witness. I imagine about nine they manoeuvred, and laid their heads the other way; a little after ten we tacked after them; the first I saw of their being about was just before the firing began; I did not know they were standing to us till just before the firing began; I could not know they were in a line of battle, I did not know they were not upon the same tack till just before the French fleet had tacked again.

Admiral Montagu. My question was, whether or not Captain Marshall saw the French fleet; and at what time he saw the French fleet, whether before they began to engage, or after, in a line of battle?

Judge Advocate. Whether you saw them before they began the engagement in a line of battle?

A. I imagine they were before they tacked about nine o'clock I believe it might be, they appeared to me so.

Prosecutor. Did Admiral Keppel make a signal for the fleet to form into a line of battle, or into a line upon any point of the compass that day before, the engagement began?

The Admiral. I beg pardon, there was an answer he made to a question, I forget whether it was moved by a member of the Court, or the Vice-Admiral himself; but as I have taken it down here the answer is—he did never see the French fleet in a line of battle till the firing began—I don't know that it is wrote down there at all.

Judge Advocate. The answer is, he did not observe them in a line of battle, nor upon the contrary tack, till just before the firing began a-head.

Capt. Marshall. Then I observed them upon a contrary tack, but I don't know that they were in a line of battle?

Judge Advocate. I will read it—Soon after the fleet tacked, was not the French fleet discovered to windward, approaching towards the British fleet in a regular line of battle a-head—the answer now is—he did not observe them in a line of battle, nor upon the contrary tack, till just before the firing began.

Capt. Marshall. And whether they were then in a line of battle, I know not.

Judge Advocate. Then we go on to the question—Whether or not you saw the French fleet before the engagement in a line of battle—the answer was—They were, before they tacked about nine o'clock, as they appeared to me—the question now is—Did Admiral Keppel make a signal for the fleet to form into a line of battle, or not, upon any point of the compass?

Capt. Marshall. No, I think not.

Prosecutor. Was there time for doing so, from day-light in the morning before the time the engagement began?

A. Most certainly, five hours.

Q. Did

Q. Did the King's fleet advance towards that of France without being in such line or order?

A. Yes.

Court. Whether or no there was a general signal for the whole fleet to chase at that time?

Judge Advocate. Was there a general signal for the whole fleet to chase at this time?

A. Not that day, but I considered ourselves in chase of them nearly the whole time; there was a signal one day, we had been in chase the whole time; there was one day we were in a line of battle; when that line of battle signal was out, we could not be in chase, I conceive.

The Admiral. I beg his exact words may be taken down, whatever they are.

President. From the first time you saw them till the time of the engagement, you considered yourself in constant pursuit of them, except when the signal was out for coming in a line of battle?

A. I do, that is my firm opinion.

Judge Advocate. Now it stands, not that day, but I considered ourselves in chase from the first time we saw them, except when there was a signal for the line of battle—is not that your answer?

A. Yes.

Prosecutor. Did the French fleet, by attacking us when in disorder, and themselves in good order—

The Admiral. I must beg to interrupt that question, he said neither one nor the other as I understood—that question assumes facts.

Prosecutor. He said he observed them to be in regular order, except early in the morning.

Captain Marshall. I have not said that.

Judge Advocate. He has not been asked any question about order or disorder.

A. Yes, I have; I said I did not know.

Prosecutor. Were we advanced to the engagement, without being in any line or order?

A. Yes.

Q. So far I understand—so far I apprehend I am within the rules of propriety. I apprehend what the evidence has said was, we advanced without being in order in line of battle, or any other; it is questioned whether he is meant to say, they themselves were in good order?

President. He said he observed the French fleet was in a line, except at six in the morning?

Captain Marshall. I did not speak from supposition; that question implies it.

The Admiral. He should put his questions straight, he is reasoning upon his questions—put them direct, ask your questions straight.

Admiral Montagu. Reasoning will not do.

Prosecutor. Were the French fleet attacking us while we were in disorder?

The Admiral. That I object to, he has said not in a line, but has not said while in disorder.

Prosecutor. While we were not in a line, nor in any order?

The Admiral. While not in a line, with all my heart.

Prosecutor. The question was, Were the French fleet attacking us while not in a line, or any order—The answer was, No signal was made for a line of battle, nor any line upon any point of the compass.

Judge Advocate. Did the French fleet by attacking us while we were not in a line, nor any order—

Admiral Montagu. We must leave out the word order, it is asking his opinion of it; it might not be in a line of battle, and yet in proper order.

The Admiral. I apprehend he is to give his evidence, and not his opinion.

Admiral Montagu. I have not heard you say our fleet was in disorder the 27th or 28th.

Prosecutor. From the manner of engaging, was it not impossible for our ships to engage the enemy ship to ship?

A. It was impossible, as some of our ships were so far to leeward.

Q. Did Admiral Keppel make a signal for battle while the fleet (I don't know how to word it so as to be without exception) without being in a line of battle, that is, how I mean to have the word introduced, or order—

The Admiral. I must beg no reasoning may be admitted.

Prosecutor. I hope the Court will permit me to give reasons for them to judge, and the Admiral's signals will be proper to lay before the Court to explain this point; the signals for laying the fleets to points of the compass, are not the signals for the line of battle.

Judge Advocate. The question stands at present, did Admiral Keppel make the signals for battle while the fleet was without any line of battle, or any other line?

A. Yes.

Court. Can you recollect whether the Admiral made a signal for battle before the firing began?

A. The firing began before the signal was made for battle.

Court. Did the French or English fire first?

A. I know not, from my own observation.

Q. It was said there was a signal made for ships to leeward to chase, you do not know exactly the ships name; but can you tell, Captain Marshall, what sail the ships were under at the time the signal was made to chase?

A. I am pretty certain some of those ships had their main-sails up.

Q. Had they all their other sails set.

A. I think not their top-gallant sails, whether their gib or stay-sails were up, I cannot tell.

Prosecutor. I beg leave to introduce a question, in consequence of that last answer to explain something: Were not those ships then ahead of the Admiral at the time the signal was made for chase, upon his lee-bow.

A. Yes, I believe they were—some of them I believe were.

Q. Then such of them as were of the Vice-Admiral of the Blue's division being in that situation, and upon the larboard tack, was not that the proper station for that division to be in readiness for forming the line of battle upon that tack, in case the signal had been made for it, that division being to lead upon that tack?

A. The Vice-Admiral of the Blue's division was upon the larboard tack.

Q. Was that the proper station for the Vice-Admiral of the Blue's division to be in readiness to form the line of battle upon that tack, in case the signal had been made for them, that division being to lead upon that tack.

Admiral Montagu. Capt. Marshall will give you a proper answer if you ask proper questions, but the question, whether they ought to be upon one station, or the other, is making Capt. Marshall the judge, which he ought not to be; I don't think that Captain Marshall has a right to speak of his opinion.

Prosecutor. His last answer was, that the Vice-Admiral of the Blue's division leads upon the larboard tack.

Q. Was not some of the frigates or fire ships exposed to the fire of the enemy before they could get out of the way?

A. I know not, I ran into my station.

Q. Did

Q. Did any of the enemy's shot go over your ship before you got out of the way?

A. No, not till I was in my station a-breast of the Victory.

Court. To windward or leeward.

A. To leeward, Sir.

Judge Advocate repeats the question, Whether the enemy's shot did not go over your ship before you got out of the way.

A. No, not till I was in my station to leeward, and brought too, and then I think twice we bore up a little to get out of the reach of shot, because I thought we had no business there, to the best of my remembrance.

Prosecutor. When the Arethusa bore up to go to leeward of the Victory, were any of our frigates or fire ships then to windward, and further a-head.

A. There might be, I cannot be positive.

Q. What situation did you preserve with respect to the Victory during the time she was going along the rear of the French line?

A. I endeavoured to keep upon the Victory's beam out of gun-shot.

Q. Was you in that position at the time the Victory passed the last ship of the French line?

A. I cannot be positive to the exact position of the ship, the Victory was in a smoke, and we had not seen her for some time; I endeavoured to keep in my station, I will not say had not seen her for some time; at times we did see her.

Prosecutor. What situation did you preserve during the time the Victory was running down along the French line, or going down?

Admiral Montagu. He says, what situation did you preserve during the time the Victory was running down, or going down the French line; I understand so far from going down, they were luffing up; the French fleet was to leeward; I understand going down, is going large, keeping the wind is advancing towards her; I think that requires an explanation before the other question is asked; it does not appear to me Mr. Keppel was to windward of the French fleet.

Prosecutor. If our fleet kept up with the French line, they must have run through the line?

The Admiral. That is a matter we have proof of?

Prosecutor. If they were edging along the rear of the French line—

Admiral Montagu. You mean proceeding a-long.

Prosecutor. Let it be proceeding a-long the rear of the French line—what situation did you observe?

The Admiral. Part of the last answer was not put down; he says, the Victory was in a smoke and could only see her at intervals.

Judge Advocate. Interline, the Victory was in a smoke, and could only see her at intervals, I endeavoured to keep in my station.

Prosecutor. When the Victory had passed the rear of the enemy's line and ceased firing, could you see her when the smoke cleared away, and in what situation was you from her?

A. I saw the Victory certainly, it is so long ago I can't positively recollect her exact situation?

Q. How long, and how far did the Victory continue to stand on the same tack, after passing the last of the French fleet, before she wore?

A. To the best of my recollection, but a very little while.

Q. What do you mean to say by a very little while?

A. What time do I mean?

Q. Aye? What length of time do you confine that answer to?

A. I cannot confine myself, it is at such a distance.

Q. Was it ten minutes?

A. I cannot confine myself to that.

Q. As to the distance, what do you please to say as to the question?

A. I cannot ascertain the distance.

Q. At what time did the Victory wear?

A. We repeated the signal soon after one, as it appears by my minutes taken by the Purser of the ship, he was the person I appointed.

Admiral Montagu. Do you know of your own knowledge, what time the Victory wore after she had passed the French fleet?

A. It must be soon after one. I could not have a spying glass in my hand, and make minutes myself; there was no signal made I had not seen; I imagined it was soon after one.

Prosecutor. Was the signal for battle on board the Victory hauled down before or after she wore?

A. To the best of my recollection after she wore.

Q. How long after?

A. Not a great while—it could not be a great while—it is a distance of time ago—I cannot tell the exact time.

Q. Were minutes taken on board the Arethusa of the signals made, examined and compared with those minutes taken on board the Victory?

A. These minutes that I have in my hand, were taken by the Purser, and will be sworn to.

Q. I want an answer to my question?

A. No, they have not been.

Q. Not compared with any other?

A. No, they have not.

Judge Advocate. The answer is, These minutes I have in my hand have been taken by the Purser, and will be sworn to; and have not been compared with other minutes.

Captain Marshall. We have seen at times how they agreed, but that was only as to time, and there has been no alteration.

Prosecutor. I beg to ask Captain Marshall whether those minutes he has in his hand marks the time when the signal for fighting was hauled down?

A. It does.

Q. Please to see what it is?

A. At twenty-six minutes past one, P. M.

Q. Did the Victory at any time set her top-gallant sails that day?

A. I don't recollect that she did.

Q. What was the first signal the Admiral made after the Victory wore, and stood again towards the French fleet?

A. A Union flag, a Blue and Red Cross at the mizen peak, and one gun.

Q. What time was that?

A. It was forty minutes past one.

Q. What was the next signal he made?

A. Blue, with a Red cross.

Court. A signal for the line?

A. A signal to form the line a cable's length a-head.

Q. What was the next signal made?

A. Flag, striped Blue and White at the mizen top-mast head. Yellow pennant at the main top-mast head.

Court. For what?

A. The Proserpine to come within hail.—Soon after, Yellow pennant fore top-mast head, for the Arethusa to come within hail.

Q. What was the next signal?

A. I was on board the Victory when the next signal was made.

Q. Have you minutes?

A. Yes.

Q. Speak to time?

D

A. About

A. About fifty minutes past two, a Blue pennant at the ensign staff.

Q. The signification?

A. For the Fleet to wear.

Q. What was the next?

A. As appears by my minutes, though so long ago I cannot remember pennants particularly; at three, a Yellow pennant at the main top-mast head, the Proserpine's signal?

Prosecutor. What was the next signal?

A. Twenty-four minutes past three, a Blue flag at the mizen peak, for the ships to windward to get into the Admiral's wake.

Q. What was the next signal?

A. At thirty minutes past three, a Union and Blue flag with a red Cross at the mizen-peak.

Court. Was not that up before?

A. We had hauled it down, Sir. I was not asked when I hauled it down.

Judge Advocate. For what signal?

A. For the fleet to form a line a-head.

Prosecutor. What time was it hauled down? No answer.

Judge Advocate. What time are you now speaking of?

A. It was hoisted forty minutes past one.

Court. What time was it hauled down?

A. It was hauled down, Sir, at twenty-three minutes after three.

Prosecutor. What signal are you upon now?

A. A signal made thirty minutes past three, a Union and Blue flag at the mizen peak, and one gun, for the fleet to form the line a-head a cable's length asunder.

Prosecutor. Now go to the next question, by which it appears when it was hoisted again.

Judge Advocate. The answer is, thirty minutes past three.

Prosecutor. It was seven minutes down?

A. Yes, Sir.

Prosecutor. What was the next signal made?

A. Fifty minutes past three, a Yellow pennant at the mizen top-mast head, the Milford's signal.

Q. For what purpose?

A. No purpose in particular; the signal was out, the pennant was only flying for the Captain, I presume so; it was the way the frigates signals were made all that day.

Q. Now the next?

A. White pennants at the starboard main top-fail yard-arm.

A. At what time?

A. It must be nearly the same time.

Q. What signal?

A. The White pennant is the Duke's signal.

Court. You had the signal for the line of battle out?

A. The signal had been hoisted upwards of twenty minutes.

Q. Was that to call the Captain?

A. The next thing will put that right.

Q. What was the next?

A. A flag striped Blue and White at the main-top-mast-head, for a particular ship to make more sail.

Court. That was hoisted at the same time.

A. Nearly at the same time.

Q. To make the Duke make more sail?

A. I suppose so.

Q. Do you recollect there was any other pennants out at that time?

A. I have said a yellow pennant was out, we had not hauled it in.

Prosecutor. Then the next signal?

A. Thirty-seven minutes past four, a Spanish ensign at the maintop-mast-head, observing ships out of their station.

Admiral Montagu. Any more pennants out?

A. Yes.

Q. What was the next?

A. There were some pennants, repeated about fifty-six minutes past four. I am very apt to believe that must be a mistake; I am pretty certain it is, but this is a red pennant at the mizen-top-mast-head, the Prince George's signal.

Court. How long was that after the Spanish signal?

A. It appears by the minutes some time, if we did make them, they were made on board the Victory, I don't know how they came to be so long.

Admiral Montagu. A Red pennant at the mizen-top-mast-head; for what ship?

A. The Prince George.

Q. What the next?

A. A Blue pennant at the starboard-mizen-top-fail yard arm, the Bienfaisant's signal.

Q. At what time was the Bienfaisant's signal out?

A. Fifty-seven minutes past four, and there were more signals made.

Prosecutor. You have only two more ships signals?

A. I have only two, but there were more signals made at that time, but I have not minutes of them.

Q. Do you mean at this time, or afterwards?

A. No, at the time the ships being out of their stations; the Prince George and Bienfaisant, and some other ships, were out of their stations.

Q. You have named two ships whose signals you plainly discerned, at the time the Spanish flag was hoisted?

A. Yes.

Q. Then you saw more made, do you mean after that time, or at that time?

A. The signal of the Spanish flag flew till near dark, or quite I believe.

Court. Do you know from that time 'till near dark, what number of pennants might be thrown out.

The Admiral. I have one question to propose that relates to that flag, the two pennants—did he take any notice of the Prince George and Bienfaisant, who were both in the line a-head, did not they upon that signal fall immediately a-stern—whether he saw them obey that signal as instantaneously as I have described?

A. I do not recollect.

Judge Advocate. Give me leave to put that down.

Court. The question had better come in after Sir Hugh Palliser has asked his questions—you say the ships obeyed their signals immediately?

A. I did not take any notice.

Prosecutor. Will you please to go on and give an account of the several ships signals thrown out, at different times, under that flag, after those two pennants for those two ships, naming them, were so thrown out.

A. At Twenty-two minutes past five, a yellow pennant at the maintop-mast-head, the Proserpine's signal; thirty-two minutes past five, a yellow pennant starboard maintop-fail yard-arm, the Fox's signal; thirty-six minutes past six, red pennant larboard maintop-fail yard-arm, but there had some other signals been made between these pennants; after the Fox's signal, there was another made, a flag.

Prosecutor. All the ships signals thrown out with the Spanish flag, and those ships taking their stations which you observed out, I wish to have a regular account of them.

Court. Were there any more signals besides, with the Spanish flag—What was the next signal after the Fox's, with the Spanish flag?

A. The

A. The next was the signal for the ships to bear down.

Prosecutor. Whether those signals afterwards made were the proper signals for them to bear down.

Court. We will judge of that.

Prosecutor. There was an account, when the Blue flag was hoisted, and no account when it was hauled down—give an account of the Blue flag, when that was hauled down.

A. It was hauled down at thirty minutes past three, and the Spanish flag still flying.

Court. You said there was a Blue flag at the mizen peak, what was that signal for?

A. For the ships to windward to bear into the Admiral's wake, under the Union and the flag with the cross.

Court. Not by itself.

A. It was for six minutes by itself; the Blue flag was six minutes by itself, then the signal was repeated to form the line; it strikes me, and I perfectly remember seeing the Blue flag hoisted at the mizen peak of the Victory, and seeing of the signal between the others which I could not discern, that was hauled down, and the Blue flag was left by itself.

Admiral Montagu. What was the next flag after the Fox's signal?

A. Ten minutes after six there was a Blue flag hoisted at the ensign staff, hauled down in three minutes.

Court. What was that signal?

A. A Blue flag at the ensign staff was hoisted there by mistake, and only flew there three minutes, and then hoisted under the line of battle signal at the mizen peak, at thirteen minutes past six.

Court. What was that for?

A. For the ships to windward to get into the Admiral's wake.

Q. What was the next?

A. Thirty-six minutes past six, a Red pennant larboard main-top-sail yard-arm, the Elizabeth's signal; at the same time a Blue pennant at the larboard main-top-sail yard-arm.

Q. For what ship?

A. That was for the Terrible's signal.

Court. The Blue flag flying at the mizen peak?

A. Yes, under the line of battle, and the Spanish flag flying at the same time; the next is a Blue pennant.

Q. At what time?

A. About the same time a Blue pennant larboard fore-yard-arm.

Q. Whose signal?

A. The Centaur's; at the same time a White pennant mizen-top-sail yard-arm.

Q. Whose signal?

A. The America's—at the time those signals were made, there were either four or five Blue pennants flying on board the Victory.

Court. Where?

A. At different places, but I had but two Blue pennants to repeat, and that is all the signals.

Court. You know what ships they were for?

A. I have not minuted them down, I can tell you every ship's pennant that was Blue; the Ramillies, Thunderer, Cumberland, Terrible, Stirling Castle, Defiance, Bienfaisant, Hector, and Worcester, all Blue.

Admiral Montagu. There were either four or five Blue pennants on board the Victory, he having but two, could not repeat them all.

Prosecutor. Having those Blue pennants to repeat, can he repeat what ships they were for?

A. I did not take them down in my notes.

Prosecutor. He mentioned all the ships in the fleet that had Blue pennants belonging to them.

Judge Advocate. Shall I minute them?

The Judge Advocate was not desired to minute them, and therefore did not.

Prosecutor. Were there any more signals made before dark that night?

A. Between thirty-six minutes past six and dark, I have no minutes of any made.

Prosecutor. After the Admiral's own division had passed the rear of the French fleet, did you look towards the enemy's fleet, and those ships of our's that remained then engaged?

A. I certainly did.

Q. Had you occasion to take any particular notice of the situation of the Vice-Admiral of the Blue at any part of that time?

A. No, I did not.

Judge Advocate. The question is, did you take any particular notice of the situation of the Vice-Admiral of the Blue during that time?

A. The first I saw of the Vice-Admiral of the Blue, was coming out disabled, as the other ships were.

Q. What did you say?

A. When I saw the flag coming out of the smoke, it was after the action was over in the center.

The Judge Advocate then repeated his evidence—From the time the Admiral's own division had passed the rear of the enemy's fleet, till the time the Vice of the Blue coming out of the action disabled.

Capt. Marshall. The sails and rigging were disabled, as some of the other ships were.

Admiral Montagu. Does he mean the whole fleet or part of them?

No answer.

Prosecutor. Permit me to ask, whether he meant to say, as the other ships were that came out of the action, or what—he says as many of the other ships were.

Judge Advocate. Capt. Marshall desires I should strike out the word many.

Court. As some other ships were?

Capt. Marshall. Yes.

Admiral Montagu. Say what is to be put down to the Judge Advocate.

Judge Advocate. The first I saw of the Vice of the Blue, was his coming out of the action disabled, as some other ships were?

A. Yes.

Q. Those were your last words?

A. Yes, it appeared to me so.

Prosecutor. Was this observation before or after Admiral Keppel had wore?

A. Before.

Prosecutor. Did you afterwards take notice of the Formidable, after coming out of the action as you described, wearing and laying her head towards the enemy again?

A. I did not observe her wear.

Q. Did you observe her laying with her head towards the enemy again, though you did not observe the moment she did it?

A. Yes, Sir; I conceive in my situation to be now to windward after wearing, made sail to get into my station, and tacked close upon the Formidable's quarter, as I would not go so near to windward of the Vice-Admiral; I then fetched under the Victory's lee bow and put about, and while in stays was hailed from the Victory to come on board, which I immediately obeyed.

Q. At the time when you observed the Formidable was laying with her head towards the enemy; the first time you observed that, was the Admiral's division then wore—Admiral Keppel's division.

The Admiral. May I correct you, Sir, please to say the Admiral, Sir. We shall not disagree about the points in question, but the distinction will be better understood.

Prosecutor.

Prosecutor. Was that before or after the Admiral had made the signal to wear?

A. After.

Q. At what distance did you esteem the Admiral at that time from the Formidable?

A. At the time of tacking—at the time I tacked upon the other quarter.

Q. I mean at the time you first took notice of the Formidable, being with her head towards the enemy?

A. At no very great distance upon her starboard lee-bow.

Q. What lee-bow does Captain Marshall mean?

A. We had our larboard tacks when we wore to the Admiral, when the Formidable was upon her larboard tacks, on the lee-bow.

Q. What lee-bow?

A. The Victory's lee-bow.

Judge Advocate. At no very great distance from the Victory's lee-bow.

Prosecutor. I think Captain Marshall says he ran from the Formidable to the Victory's lee-bow.

Judge Advocate. Yes, at no very great distance from the Victory's lee-bow.

Prosecutor. After that he passed the Formidable upon her lee-quarter.

Captain Marshall. No, her weather quarter, and tacked short of the Victory.

Q. By running from one ship to the other, are not you able to give an estimate of the distance?

A. A very little distance I think it must be.

Q. He don't chuse to say what distance.

A. It could be no very great distance—we were soon about.

Q. What sail had the Victory out while she was standing beyond the rear of the French fleet before she wore?

A. I cannot tell, there was such a smoke.

Q. What sail had she set when she was afterwards standing towards the French fleet, after having wore?

A. I protest I don't recollect, but I think the main top-sail was unbent.

Q. Did you observe when the Formidable wore again, and went from the enemy towards the Admiral?

A. She must have wore while I was in my boat, I did not see her.

Q. The first time you did take notice of her having her head towards the Admiral, was that before or after you observed the Admiral's main top-sail was unbent.

A. I observed her upon the Victory's quarter deck—I observed the Formidable upon the Victory's quarter deck, standing upon the other tack; the Admiral, was upon the larboard tack; at this time I am speaking to, and the Vice-Admiral was upon the starboard tack, and I believe the Victory was the headmost ship at the time in that division of ships—in that body of ships.

Q. Did you, Sir, continue on board the Victory, till the Victory and Formidable met?

A. I was on board the Victory when the Formidable passed to leeward.

Q. When the Victory had passed the Formidable to windward, did not the Victory immediately wear and pass under the Formidable's stern to the leeward of her, and steer her course from the wind?

A. Not immediately I think.

Q. What did the Admiral do immediately while he was to leeward of the Formidable?

A. I left the Victory while she was wearing, the Admiral discharged me, and I left the Victory while she was wearing and went on board my own ship.

The Admiral. I have two questions to ask Mr. Marshall—When the Formidable stood to the Victory to leeward of her, when Captain Marshall

was on board, was the signal flying for the line of battle a-head.

A. To the best of my remembrance yes, it appears so in my minutes.

Q. I believe the line of battle is on the table—What situation upon the larboard tack was the Vice-Admiral of the Blue's, when the signal was out for the line of battle?

Judge Advocate. What was the situation of the Vice-Admiral of the Blue when the signal was out for the line of battle?

The Admiral. No, Sir, the question was what was the Vice Admiral's situation upon the larboard tack, when the signal was out from the Admiral for the line of battle a-head?

A. A-head of the Victory, leaving room for the Foudroyant, Prince George, Bienfaisant, Worcester, Elizabeth, Defiance and Robuste to form between.

Q. Was there any one ship whatever a-head of the Victory, or between her and the Victory at the time the Vice-Admiral of the Blue passed?

A. None.

Prosecutor said he had not done with the witness.

The Admiral said he thought he had, but he should ask no more questions of Captain Marshall, till the Prosecutor had done.

Court adjourned to 10 o'clock the next day.

The Third Day's Proceedings, Jan. 9, 1779.

Prosecutor. I beg the two last questions that were put to Capt. Marshall, with their answers, may be first read.

Capt. Marshall. I should choose the whole; I beg what I swore to yesterday, may be read over again to refresh my memory.

The President desired the Judge Advocate to read the resolution of the Court concerning the log-books.

The resolution of the Court is, That the log-books are not to be examined by any body but the Court.

The minutes of Captain Marshall's evidence read.—An observation was made by the Judge Advocate during the reading—He does not mention when the Prince George's signal was hauled down.

Capt. Marshall. It is two minutes after five.

Admiral Montagu. I don't imagine it will be added to the evidence this day; he may refresh his memory certainly.

Judge Advocate. This will come into the minutes of this day; he wishes to make that observation.

Admiral Montagu. It must either come from a question of the Prosecutor, or from Admiral Keppel, or the Court, one or the other, and in consequence of that, it may come in the days minutes, it cannot be interlined.

The Judge Advocate having quite finished reading Capt. Marshall's evidence; the Court proceeded in his examination.

The Admiral then said—There were two answers not taken exactly, and wished them to be corrected.

Admiral Montagu. Those questions that were omitted to be put, let it be upon which side it will, when they come to call their evidence in, they have a right to call for what questions they please—I should think it would be interfering with the business of the Prosecutor for the Crown.

The Admiral. Then I beg upon this occasion, every word that is said, may be wrote down, as it was mentioned. I beg it may be down.

Admiral Montagu. If he wishes it, we must debate.

The Admiral said, I do not mean to take up a minute of your time more than necessary, and waved it.

Prosecutor. I desire Capt. Marshall may be asked, whether while the Formidable was between the Victory, and the rear of the enemy's fleet, was not she (the Formidable) the nearest ship to the enemy, and the only one between them and the Victory?

A. I think she was, I believe she was.

Q. Did you observe, Sir, three of the enemy's ships standing directly for the Formidable, and at a less distance from her than the Victory was, and with more sail, the Victory having unbent her maintop-top-sail.

Court. That way of putting the question will not do.

The Admiral. I beg the accuser may separate the questions, that the evidence may not be led to misinform the Court.

Prosecutor. The Court will judge of it whether it is or not proper, and I shall be governed by the Court.

The Admiral. I apprehend two question together will not bring the exact fact out.

Q. Did you observe three of the enemy's ships standing towards the Formidable, and with more sail than the Victory?

The Admiral. I apprehend there are three questions.

Prosecutor. If the Court choose to have the questions subdivided for their satisfaction, if they will please to say how they will have them subdivided—I put it together, to dispatch and save time.

The Admiral. There are certainly three questions there.

Prosecutor. One answer, answers to the whole at once, I believe, yes, or no.

The Admiral. I must beg it may not be commented upon, and that one question may be put at a time.

Judge Advocate then read the question in the same manner the Prosecutor had put it.

The Admiral observed again there were three questions.

Prosecutor. I have no objection to make to any thing the Admiral may think proper to offer; I beg the Court will say, whether they request me to do as he desires or not; as it is different from what I proposed, I shall submit to the Court's pleasure.

Admiral Montagu. Mr. President, I see we are differing very much from the rule and form of Court Martials; I have sat in a great many, and ever thought the Prosecutor for the Crown had a right to ask such questions to prove the accusations as he thought proper; as to the person accused, his business is, for his own sake, to make such remarks as he shall think proper for his defence; but I do not think the Prosecutor should be interrupted in the questions he is to ask, in order to satisfy the Court; this Court are the proper judges whether he asks proper, or improper; if improper, you will make your objection to the Court.

The Admiral. There are three questions put in one, which requires Aye, for the first part, No, for the middle part, Aye, or No, to the other part.

Admiral Montagu. I look upon it, that the evidence has a good right to answer every part of it, by saying to the first part, I say Yes, or No—to the latter part, Yes or No.

The Admiral. If you will please to put them to him.

Judge Advocate then read the question as before.

Court. They are really too long.

Admiral Montagu. The Court have a right to take it into consideration, and ask what question they think proper, on any part of it, the questions

are very long; if I was a short-hand writer I could not take it down, and I don't write very fast.

Judge Advocate. Did you observe three of the enemy's ships standing directly for the Formidable, and at a less distance.

Admiral Montagu. Now be so good to stop at Formidable.

Judge Advocate. Did you observe three of the enemy's ships standing directly for the Formidable.

A. You will please to remember I told you I was on board the Victory; the first I saw of the French ships standing towards us, was from the Admiral's starboard quarter-gallery, that is the first I saw of their standing to us.

Admiral Montagu. What is the other part of the question.

The Judge Advocate read the former question, and then said—and at a less distance from her than the Victory was—what is your answer to that?

A. I can by no means think so.

The Admiral objected to the irregularity of the Prosecutor's questions.

Prosecutor said they were perfectly regular.

Admiral Montagu. You, Gentlemen, must not debate, we will put an end to any thing irregular from the Court.

The Admiral. I will put you in mind only of the irregularities.

Admiral Montagu then rose from his seat, and laid his hand upon his breast, and said—It is our duty to have you at heart, Sir, as well as our King and Country, and we will do every thing that is proper.

The Judge Advocate then read the questions blended as at first, concluding with these words,—and at a less distance from the Formidable, and with more sail than the Victory?

A. I know not what sail the French had.

Admiral Montagu. Don't reason upon it.

Capt. Marshall. I don't wish to reason upon it; if I have a plain question, I will give a plain answer; I will speak nothing but what I perfectly well know.

The questions and answers repeated, after which Capt. Marshall said—to the best of my recollection, the Victory bent her main-top-sail, at the time she wore from the French fleet; I was upon the quarter-deck of the Victory and saw the buntlings of the main-top-sail hauled up just before I went out of the ship.

Q. Did you observe three of the enemy's ships standing directly for the Formidable, at a less distance than the Victory was, and with more sail than the Victory, she having unbent her maintop sail, and hauled down the signal for battle,

A. I have already said, the signal for battle was hauled down at twenty-six minutes past one.

The questions read again.

A. You will please to remember, I said I was on board the Victory, and the first I saw of the French ships standing towards us was, from the Admiral's starboard quarter-gallery; I can by no means think they were at a less distance from the Formidable than the Victory; I know not what sail they had. At the time the Victory wore from the French fleet I was upon the quarter-deck, and saw the buntlings of the maintop sail hauling up just before I left the said ship: I have already said at twenty-six minutes past one.

Court. You speak to the best of your knowledge?

A. I believe it.

Admiral Montagu. You can but speak to the best of your knowledge, you must not put believe in.

Prosecutor. While the Victory was standing towards the enemy, were any of the ships of the Admiral's own division then in their station a-head of him?

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Prosecutor. Not standing in their stations, but a-head of him?

A. No, I believe not. I have already said that the Victory, after the Formidable had wore, was the headmost ship.

Judge Advocate. He answers no.

Prosecutor. Did the Admiral make a signal for them to get into their stations while he was standing towards the enemy?

A. The signal for the fleet to form a line a-head, one cable's length asunder appears, by my minutes to have been flying at that time; and to the best of my recollection it was flying at that time.

Prosecutor. Was the signal made for observing any particular ships who should be a-head of the Admiral, being out of their station at that time.

A. No. I believe not.

Q. Were not the ships of the Vice of the Blue's division just then come out of the action and disabled, as you said before?

The Admiral. I beg it may be read to him, I don't remember he said—the Vice-Admiral's division—but his ship came out of the action disabled, as many other ships were.

Judge Advocate. Does the Admiral mean the question that was last put?

Admiral Montagu. The question just now asked.

Judge Advocate. The question is, Was the signal made for observing any of the ships, whose proper station was a-head of the Admiral, being out of their station at that time?

The answer is, No, I believe not.

The Admiral. The accuser stated another question then; he had answered yesterday; and he stated it in a manner he had not put it yesterday.

Prosecutor. The question I proposed was, Was not the ships of the Vice of the Blue's division just then come out of action and disabled as before related; if the objection is to the reference, as before related, it might not be the same. I have no objection to that being out.

The Admiral. The answer yesterday was—as some other ships were.

Prosecutor. Were not the ships of the Vice of the Blue's division just then come out of action and disabled, including the Formidable?

Court. That question was both asked and answered yesterday; the Formidable came out of the action disabled, as some other ships were.

Judge Advocate. Was not the Vice-Admiral of the Blue, and the ships of his division, just then come out of the action and disabled, as some other ships were.

A. I yesterday observed, the Formidable and some ships were disabled, but who they were I cannot say—their names I did not know.

Prosecutor. Had not the French fleet then broken up their line, and were then in disorder?

A. I had but a momentary view out of the Admiral's starboard quarter gallery, and cannot ascertain it, as I went soon upon deck.

Q. During the time the Admiral was standing towards the French fleet, where was the Vice-Admiral of the Red and his division?

A. Nearly upon the Admiral's larboard or weather beam, or rather before the beam.

Q. At what distance did you esteem or reckon the Vice-Admiral of the Red from the Victory at the time she wore, and stood for the enemy?

A. I cannot tell at this distance—I cannot determine at this distance.

Q. Was it not considerably to the van of the French?

A. I have observed that I saw the French fleet out of the Admiral's starboard quarter gallery, and that the Vice of the Red's division was rather before the larboard beam, or weather beam.

Judge Advocate. Of the Victory?

A. Of the Victory.

Prosecutor. That is all the answer you chuse to give?

A. That is all the answer I can give.

Q. Then I desire he may be asked, where he was when he saw the Vice-Admiral of the Red's division, towards, or before the Admiral's weather beam?

Judge Advocate. Where was you when you saw the Vice-Admiral of the Red's division in the situation you have before described?

A. Upon the Victory's quarter-deck.

The Admiral. The words are changed a little; he did not say as the Judge Advocate has said.

Admiral Montagu. Read the first question and his answer.

Judge Advocate. Where was you when you saw the Vice-Admiral of the Red's division in the situation you have before described?

The Admiral. It is not so.

Judge Advocate. It is to avoid repetition—to the Prosecutor—I beg, Sir, to take down your question.

Prosecutor. Where was you when you saw the Vice of the Red's division to windward, and before the Victory's beam?

A. Upon the Victory's quarter-deck.

Admiral Montagu. I understood before, he said the Victory's quarter-gallery.

Court. Read the two last questions and answers.

Judge Advocate. The question preceding the last is this—Were they not considerably to windward of the French?—the answer is, I have observed, I saw the French fleet out of the Admiral's starboard quarter-gallery, and that the Vice of the Red's division was rather before the larboard or weather-beam of the Victory.

Court. Then he said, he saw the French out of the Admiral's starboard quarter-gallery—now he says, he saw the Admiral of the Red's division from the quarter deck.

Prosecutor. While the Admiral was standing towards the French fleet, was there any signal made for the ships of the starboard tack, in a line of battle, to take the lead at that time?

A. No.

Judge Advocate. I believe not.

Admiral Montagu. He says positively, No.

Prosecutor. I would go back to the time when he left the Victory and the Formidable together, and would put a question in consequence of an answer to a question put then, if the Court will permit me. I mention it for the consideration of the Court. The question yesterday was—Whether the Victory did not immediately wear after passing the rear of the French fleet?—I would ask, Whether the Victory wore without standing beyond the Formidable, whether she did not at first offer to pass to windward of the Formidable?

Admiral Montagu. I do understand myself, if any thing occurs to the Vice-Admiral of any question asked yesterday, that may tend to clear up facts, he has certainly a right to ask them this day, and every day while the Court is sitting.

Prosecutor. I will make it a little more distinct if I can.—Did the Victory wear without standing beyond the Formidable, and first seemed to offer to pass again to windward of her?

A. I don't understand it.

The Judge Advocate repeats the question, and says Captain Marshall don't understand it.

Prosecutor. Did the Victory wear without standing beyond the Formidable, and first seem to offer to pass again to windward of her?

A. As soon as the Victory was far enough from the Formidable to wear, she did wear, I know not what the intentions were for standing?

Judge Advocate. Shall I put the question another way, Sir?

Court.

Court. No, he has given his answer.

The Judge Advocate repeats the question, did the Victory wear, &c.

A. I said yesterday I left the Victory when she was wearing, I was in my boat immediately after that, and cannot tell any thing more.

The Judge Advocate read those questions and answers from the proceedings of yesterday, concluding thus.—I likewise observed when the Formidable was passing upon the starboard side of the Victory, I was in my boat, but immediately after that—

Captain Marshall. No, not immediately after the Formidable passed the Victory.

Q. What then?

A. It was the moment the Victory hung her weather I went into my boat, but the Formidable had passed the Victory, I cannot say where she was, she had passed her beam some minutes.

Judge Advocate. I said I left the Victory when wearing, the Formidable was passing her starboard side, I was in my boat—give me your whole answer.

Captain Marshall. I cannot reconcile myself to that; I observed the Formidable was passing upon the starboard side of the Victory, I was in my boat immediately upon the signal's being made; I went into my boat as soon as I could.

Judge Advocate. I will state the question first, then the answer—Did the Victory wear without standing beyond the Formidable, and first seemed to offer to pass again to windward of her.—I said yesterday I left the Victory when she was wearing.—I likewise observed the Formidable was passing upon the starboard side of the Victory?

Captain Marshall. But it was before she wore—stop there.

The Admiral. I beg to have it read.

Judge Advocate. Did the Victory wear without standing beyond the Formidable, and first seemed to offer to pass again to windward of her.—I said yesterday I left the Victory when she was wearing.—I likewise observed the Formidable was passing on the starboard side of the Victory.

The Admiral. But the witness said but it was before she wore.

Judge Advocate. He wished his answer might stop.—I likewise observed the Formidable was passing upon the starboard side of the Victory.—Is that your answer?

The Admiral. It runs here; I was in my boat—immediately upon the signal being made I went into my boat.

Admiral Montagu. We must take it as it stands upon our own minutes.

One of the Court. It was taken, and he ordered it to be struck out.

The Admiral. I beg pardon, it would save you a great deal of time to set it right now; it is not for the sake of cavilling that I mention it, but for your having every word this Gentleman says.

Prosecutor. After you returned on board your own ship, did you follow the Victory in order to be attentive to the signals?

A. I got into my station as expeditiously as possible.

Q. How did the Admiral steer after he passed the lee of the Formidable?

A. It appears by my log, S. and by E.

Q. Was that upon a wind, or from the wind?

A. From the wind.

Q. How many points?

A. I cannot pretend to ascertain the sailing of the Victory, as we sailed various courses to keep our station.

Q. How was the wind?

A. I have not the wind down.

Q. Is the ship's log book on the table?

A. This is a true copy of it.

Judge Advocate. No log-book was delivered in of that ship.

Admiral Montagu. The master's dead, he was killed.

Captain Marshall. At five o'clock the wind was S. W. and by W.

Court. The answer of Captain Marshall before was, I have not the wind down.

A. Till five o'clock.

Judge Advocate. How was the wind?—You have said first of all I have not the wind down?

A. I have not the wind down till five o'clock, when it was S. W. and by W.

Prosecutor. Do you remember what sail the Admiral carried?

A. No.

Q. When the Blue flag at the mizen peak was first hoisted?

A. At that time I cannot recollect.

Q. The Victory having passed to leeward of the Formidable, and the Victory standing upon a wind at that time, could her distance then be great from the Victory, if she had lain still?

A. I have not said as I recollect, that the Victory was standing upon a wind.

Admiral Montagu. He knows nothing of his own knowledge about it; it appears from the log, you don't know yourself how the wind was?

A. No, I cannot say.

Q. Whether that space of time would admit of a great distance, whether the Victory was upon a wind, or going large from the wind?

A. It appears by my minutes to be about an hour and half between making the two signals, I have not in my log any rate of the ship's going till five o'clock, and consequently cannot ascertain it.

Q. The distance of time between the two signals, and how many signals does he allude to?

A. The signal, a Blue pennant at the ensign staff, made at fifteen minutes past two for the fleet to wear; and a Blue flag at the mizen peak, at twenty-four minutes past three, for ships to windward to get into the Admiral's wake.

Court. That is only an hour and ten minutes, or thereabouts?

A. How so, Sir?

Court. Fifteen minutes past two—that is what you said.

A. It is fifteen minutes past two, and thirty-four minutes past three; it appears by my minutes to be about thirty-four minutes.

Q. That is your correction?

A. Yes, it is very evident it was a mistake.

Prosecutor. As your situation, you say, was to the windward of the Admiral, did you observe any one ship of the Vice-Admiral of the Blue's division at that time to windward of the Admiral?

A. Yes, it appeared to me there were.

Judge Advocate. More than one, or one?

Admiral Montagu. That is not a question asked; he has answered the question—yes, he believes there was.

Prosecutor. Can you name any.

A. No I cannot name the ships, I can name none of the division.

Admiral Montagu. You know none particularly.

A. No.

Q. What reason have you for saying any of them were in that situation?

A. I was upon the Victory's weather beam about two or three mile, and there were several ships appeared nearly a-stern of the Arethusa.

Q. May I ask the evidence if he strictly attends

tends to the time I am speaking of, which is thirty-four minutes only after the Admiral had wore?

A. I cannot speak to time, not having kept any minutes of the disposition of the fleet.

Q. Did you in the *Arethusa* get three miles upon the Admiral's weather beam in thirty-four minutes?

A. I should suppose not, but she was got there as expeditious as possible.

President. What distance was the *Arethusa* from the *Victory*, when you got into your boat?

A. Not a great distance, but the *Victory* takes a great deal more time in wearing than the frigate would in staying, and a great deal more room.

Q. By the *Victory* continuing to stand to the southward, as before mentioned, did she not leave the *Formidable* a-stern, and somewhat to windward of her wake, she having passed to leeward of her?

A. The *Formidable* was to windward, and a-stern.

Q. Did not the distance between the *Formidable*, and the *Victory*, continue encreasing the whole afternoon?

A. I cannot recollect the distance.

Q. Was not that course, you said, the Admiral was steering, directly from the enemy?

A. I believe I said the *Arethusa*.

Q. The course you said the Admiral was steering was S. and by E.

A. The *Arethusa*—I believe I objected to saying the Admiral.

The Judge Advocate referred to several former questions and answers; the last of which was as follows—How did the Admiral steer, after he passed the lee of the *Formidable*—The answer, it appears by my log, S. and by E.

Captain Marshall. That is what I said.

Prosecutor. Read the question as it now stands?

The question read—Was not that course, you said, the Admiral was steering directly from the enemy?

Prosecutor. Then I will vary it—Was not the course the Admiral did steer, directly from the enemy?

A. The enemy appeared to me upon the *Arethusa*'s larboard quarter.

Q. Did the Admiral continue the same course till night?

A. It appears by the *Arethusa*'s log, that course was steered.

Admiral Montagu. Do you know of your own knowledge how the Admiral did steer?

A. No, I do not.

Prosecutor. Don't you know of your own knowledge, whether the fleet continued to stand to the southward in like manner as it did immediately after the Admiral wore, and stood to the southward?

A. The fleet stood to the southward; but my objection to the former question was, the course, the exact course, because there was an alteration.

Q. Did they continue to do the same the whole night?

A. Yes.

Q. When the Admiral wore, and stood to the southward, did the French fleet then begin to form a new line of battle?

A. I know not when they began to form.

Q. When did you see they were forming in a line of battle?

A. Some time in the afternoon.

Q. Can you recollect whether that was before or after the Admiral had wore?

A. After the Admiral had wore.

Q. In forming their line, did they point to leeward of the British fleet?

A. Yes, they did.

Q. For that purpose did they appear to you to be going large from the wind?

Admiral Montagu. I should be glad to know for what purpose this is asked?

Prosecutor. For what purpose did it appear to you that they went from the wind?

A. I cannot say.

Prosecutor. I wish to know whether I may have the approbation of the Court respecting this question being made—In the afternoon while the signal for the line a-head was flying, and while the Admiral of the fleet was standing to the southward from the enemy, did not the Vice-Admiral of the Red, with his division, bear down into the Admiral's wake?

President. That is no question at all.

The Prosecutor repeated the question again verbatim, except the words, bear down into the Admiral's wake; and said, come down into the Admiral's wake?

President. I don't think that part was allowed before, the standing from the enemy.

The Admiral. I don't know that Captain Marshall has said we did stand from the enemy.

Admiral Montagu. Let it rest at the words standing to the southward?

Judge Advocate. In the afternoon while the signal for the line of battle was flying, and the Admiral standing to the southward, did not the Vice-Admiral Sir Robert Harland, with his division, bear down into the Admiral's wake, and at what time?

A. The time I cannot speak to.

President. But you know he did bear down?

A. Sir Robert Harland did bear down.

Prosecutor. Did bear down into the Admiral's wake, I ask it?

A. I don't know as to the wake; I don't exactly know it was into the Admiral's wake he did bear down.

Q. Was it nearly in his wake?

A. It was to the leeward of me.

Q. Can you say it was near the Admiral's wake, if you don't chuse to say positively?

A. Upon my word I cannot answer.

Q. Was not the Vice-Admiral of the Red's proper station, according to the signal then flying, a-head of the Admiral?

A. The Vice-Admiral of the Red and his division leads upon the starboard tack.

Q. Did you observe the Vice-Admiral of the Red afterwards make sail a-head into his proper station?

A. The Vice-Admiral of the Red, and some of his division, went a-head agreeable to the signal.

Q. Can he say the time when they sailed down for that purpose?

A. I cannot.

Q. What distance did you judge the *Formidable* was left a-stern at six in the evening from the *Victory*?

A. I cannot speak at this distance of time, as to the distance.

Q. During that night, did you observe any signals made by the French fleet by sky rockets?

A. No.

Q. Was the French fleet, or any part of it, in sight the next morning?

A. There was three strange sail, which I imagined to be part of the French fleet.

Q. Was any more of them seen from your ship that morning?

A. No, none that ever I were acquainted with.

Q. Did any of our ships to your own knowledge make a signal for seeing strange ships; if yea, how many?

Admiral

Admiral Montagu. Let him first give an answer, whether from his knowledge they did see strange ships?

A. I have said so.

Q. Whether any ships of the Admiral's fleet made signals?

A. There was some signals made.

Judge Advocate reads the question, as the Prosecutor had put it.

Admiral Montagu. Leave out, if yea; it is putting it in the mouth of Captain Marshall to say yea.

Judge Advocate then read the question again, leaving out, if yea.

A. There were some signals made; I was out of my station, and came into it as expeditiously as possible.

Admiral Montagu. The other part of the question is—and how many?

A. I don't know, nor by whom made.

Prosecutor. Do you know if the Admiral's ship answered it?

A. I do not, I was out of my station, as I observed.

Q. Do you know for what quarter of the compass the signal was made for seeing those ships?

A. No, I do not.

Q. Is it noted in your log-book, such signal for seeing strange ships being made?

A. It is not, Sir.

Q. Upon the 28th, is it in the log-book?

A. It is not, Sir.

Q. Were not those three ships you mentioned very near the British fleet?

A. I cannot judge the distance at this distance of time.

Q. Did they crowd sail from the British fleet?

A. Yes, I think they did.

Q. And which way did they go?

A. They seemed to me to stand away upon our starboard quarter.

Admiral Montagu. Did they stand to the eastward, northward, westward, or southward?

A. They stood to the southward.

Court. Let us hear the answer.

A. They seemed to me to stand away upon our starboard quarter.

Prosecutor. Did the fleet, or any part of them pursue those ships?

A. I cannot pretend to say.

Q. What course was that?

A. Why the S. E. quarter.

Admiral Montagu. It is all log-book evidence; if you do not know, say you do not know; I have not a doubt you will speak to the best of your knowledge; I am very sure you do.

A. I will speak nothing else.

Judge Advocate. Did the fleet, or any part of them, pursue those ships?

A. I know not, I observed before I was out of my station.

Admiral Montagu. No body accuses you, whether you were or not.

Prosecutor. Did the Admiral early in the morning upon the 28th, wear, and lay his head with the whole fleet to the northward?

Admiral Montagu. Now, I beg, before an answer is given to that question, to ask a previous one—The three ships you saw to leeward in the morning, did you take them to be line of battle ships, or frigates?

A. I cannot say what they were.

Q. Can you tell me the bearings and distance of Ushant, at noon of the 27th, according to your reckoning?

Captain Marshall. The ship's reckoning—

Prosecutor. The Arethusa's reckoning?

A. Ushant N. 86, E. 28 leagues, as appears by the log.

Q. What was it at noon upon the 28th?

A. Ushant N. 76, E. 22 leagues.

Q. How was the wind in the morning of the 28th?

A. I can only speak by the log.

Q. Very well.

A. The morning of the 28th, at two o'clock, the wind was at W. by the log, and no alterations mentioned in that day's work.

Q. What sort of weather was it then?

A. There was a fresh wind.

Q. Was it thick or clear?

A. Hazy, I think, if I recollect.

Cross-Examination by the Admiral.

The Admiral. I would not interrupt the Court if I could possibly help it, or take up too much of their time; only to make what has gone before understood right—I have four or five questions to ask, as, I suppose, I shall be permitted when upon my defence, to call this witness again.

Court. Certainly.

The Admiral. If the Court will allow me, I will ask them now—I mean to go back to early in the morning of the 27th.

Q. Upon what tack was the French fleet at day-light on the morning of the 27th?

A. Upon their larboard tack.

Q. When did they tack, and stand upon their starboard tack?

A. About nine o'clock.

Q. After they were on their starboard tack, did you ever lose sight of them for any time?

A. No.

The Admiral repeated the question.

A. No.

Q. When you saw them beginning to fire upon the headmost of the English fleet, did you observe where the French Admiral was in his own fleet?

A. I did not.

Q. Do you know what sail the Formidable had upon the larboard tack when she passed the Victory.

A. I cannot say.

Q. Was the signal for the line of battle ahead ever hauled down while the Victory was leading to the French fleet on the larboard tack?

A. No, Sir.

Q. The question about the Red division, I think, if I recollect in the minutes, was, whether they did bear down into the Admiral's wake?—The answer is, they did bear down, but he did not know whether it was in the Admiral's wake.

A. No, I did not.

Q. How many of the Vice-Admiral of the Red's division was with him at the time they bore down?

A. I did not know at that time.

Q. Does Captain Marshall recollect what ships of the center division were regularly formed astern of the Victory in their station—when I speak of my own division, I always call it the center?

The Judge Advocate repeated the question.

A. I cannot say what, but there were very few.

The Admiral. I will not trouble the Court any farther now, in the examination of Captain Marshall, as I am allowed to call him upon my defence.

President. Certainly.

President. Can you recollect what time of the day the signal was made for the line on the 27th.

Admiral Montagu. I have one question to ask Captain Marshall: that is, from the day you first saw the French fleet to the time you lost sight of them, do you, from your own observation, or knowledge, know of any act of the Commander in Chief, Admiral Keppel, behaving or conducting himself unbecoming a Flag officer?

After the Judge Advocate had repeated the question verbatim, the Prosecutor said—I beg leave to submit, whether that is perfectly regular in asking the evidence as to matter of opinion?

Admiral Montagu. In this point we can have nothing but opinion in regard to the Admiral's conduct, as people may differ in their opinions; the Admiral is accused of behaving unlike a Flag-officer during the two or three days; he is charged with running away from the French Fleet, which is cowardice; and every officer of the Fleet should be examined as to his knowledge and observation, or else I am sure we never can find it out.

The Prosecutor still objected to the question being put.

The question was further debated; the Court were of opinion Admiral Montagu was perfectly regular.

Then the Prosecutor said, I only beg I may be allowed to ask as to matter of opinion where I think proper.

Court. No doubt of it.

Then Admiral Montagu desired to know, if the Judge Advocate had taken the question down: he said he had; then he was desired to put the question to the witness.

The witness answered—no, as God is my judge.

The witness was then ordered to withdraw.

Sir WILLIAM BURNABY, Captain of the Milford, sworn.

Sir W. Burnaby. I beg to know if I may have recourse to some minutes taken, which I have in my pocket?

Court. Certainly; are they minutes of your own taking at the time, or since you have heard of this trial?

A. Sir, the greater part of them were taken at the time.

Prosecutor. When was the French fleet first seen?

A. The 24th of July, about half an hour after one in the afternoon.

Q. The 24th, according to the log-book day?

A. Yes; Friday the 24th, about one, or half an hour after one in the afternoon. I mentioned the day, Friday.

Court. Between one and two?

A. After half after one; two o'clock I find in my minutes.

Prosecutor. Was the French fleet during that afternoon to the eastward, and to the leeward, or how otherwise situated?

A. The French fleet was to the westward.

Q. What was the situation of the French fleet from the British fleet?

A. They were to the westward of us, a little upon our lee-bow, nearly a-head, or rather to leeward.

Q. How did they appear to be employed that afternoon: in forming a line of battle, or in what other way?

Court. That is before the charge; the charge is the 27th and 28th. We are beginning with the 24th.

The Admiral said he had no objection to it; but one of the Court objected, and said, they must debate it, as he could not agree. Before the Court adjourned to debate, the Prosecutor said, I beg to inform the Court why I go upon those days: it is for the sake of a train of circumstances tending to

establish the first article of the charges, which says, the French never indicated a design to decline battle; and in going into the examination of the occurrences of those days, I undertake to shew by evidence, they never did decline battle, when it was consistent for the fleet to come into battle;—and further, there is another part of my charge, as I consider it, and shall bring out in proof, which is a matter of consideration for the Court to attend to, that the French had it in their power to have avoided battle: they were to leeward of us, at a certain time, between us and the port of Brest, and they did not avail themselves of that opportunity to avoid battle, but, upon the contrary, faced us between themselves and Brest. These are grounds I wish to go into.

The Court then adjourned to debate, and being returned, desired the Judge Advocate to read their resolution.

Judge Advocate. The resolution come to by the Court, is, the accuser and accused shall be at liberty to ask any questions from the 23d of July.

Court. Please to read the question that has been put.

The question being read verbatim, the witness gave the following answer:

A. They were standing towards us in great disorder; Admiral Keppel made my signal to come within hail of him, and gave me orders to make sail a-head to reconnoitre the French fleet.

Prosecutor. Is this all tending to answer the question?

A. I made sail directly towards them, the French fleet standing towards us, keeping a little from the wind, and still in disorder: I stood towards them till within two gun-shot, or a gun-shot and an half of the van of their fleet. I judge, as it is a length of time since (I may be imperfect), I was within six or seven mile, or more, upon the lee-bow of the van of the Admiral's fleet. At half past four I tacked from the French fleet, and stood towards the Victory: the French fleet nearly about that time began to form their line a-head, directing their course, or seeming to direct their course, to the leeward of our fleet, very little from the wind.

The Admiral. He is going to a time prior to the time the Vice-Admiral asked the question: it is a narrative; he is going to an earlier period.

Prosecutor. I thought it absolutely proper for the evidence to give an answer in the way he has done, that is, for to give an account how the French fleet were employing themselves that afternoon, whether forming the line of battle, or what. Sir William has given an account as far as four o'clock.

Sir W. Burnaby. About half after four I joined Admiral Keppel.

Q. How did they appear to be employed that afternoon: that is, from two o'clock.

Sir W. Burnaby. To what hour?

Q. Till eight o'clock that night.

Court. Now give an account of yourself from eight o'clock that night?

A. I observed them under easy sail from the time that I tacked, employed in forming their line, and directing their course to the leeward of our fleet: it was very hazy, and late before I joined the Victory a second time, and received orders to go a-head, and keep between the French fleet and ours. I cannot say that I observed particularly their motions from the thickness of the weather, to the hour of eight; the rear of their fleet were, at the time I first spoke to Admiral Keppel, considerably a-head of our fleet.

Q. What was the position of the French fleet to the British fleet, at eight o'clock?

A. They were a little upon the lee-bow: many of them had formed in a line of battle.

Q. Upon what tack were they then standing?

A. Upon

A. Upon the starboard tack the French Fleet were.

Q. Did they continue to stretch upon that tack to the leeward of our fleet?

A. I did not observe that they did after eight o'clock.

Q. Were they then to leeward of the British fleet?

A. Yes, Sir.

Q. How was the wind at that time?

A. W. and by S.

Q. Did the British fleet bring too on the larboard tack about eight o'clock by signal?

A. About half past eight, Admiral Keppel made the signal for the fleet to bring too on the larboard tack.

Q. Did the British fleet lay to all that night?

A. To the best of my recollection they did; about four o'clock Admiral Keppel made a signal to form a line N. E. and S. W.

Q. Was not the Milford frigate, and another frigate, stationed between the two fleets, in order to make signals during the night, to observe the motions of the enemy, and make signals accordingly?

A. I do not know what orders were given to any other ships except my own; this signal being made to bring to, of course I obeyed that signal, and soon after lost sight of the French fleet.

Q. You were asked, whether you was the officer for that purpose?

A. I was directed to keep a-head of the French fleet and ours, and to acquaint Admiral Keppel, if they should be standing towards us, or likely to approach us very soon, to give an account of their motions.

Q. Had you occasion to make any signals to the Admiral during that night, of the motions of the enemy?

A. No; as I brought to a-head of our Fleet, and had lost sight of the enemy, it being very late before I reached the van of our Fleet.

Q. Did you observe our Fleet make any signals that night?

A. No.

Q. What latitude was you in according to your reckoning at noon upon the 23d of July?

A. I do not recollect.

Q. The French Fleet being to leeward of the British Fleet, at night, and standing to the southward, at the same time our Fleet was laying to upon the larboard tack with their heads to the northward—are not you of opinion, or are you of opinion, that if they were disposed to avoid coming to an engagement, they would have continued to stand upon that tack during that night, having the port of Brest under their lee?

The Admiral. I beg pardon, but I beg leave to interrupt this question:—he has not said they did stand so, that question admits he knows how they all stood that night:—the word *all* in it is certainly another question, which should be put separate.

Prosecutor. I have the same indulgence in matters of opinion as you.

The Admiral. That question supposes he has said he knew how they were all situated.

Prosecutor. I beg the question may be read.

The question was accordingly read verbatim by the Judge Advocate.

Prosecutor. I have not supposed they did stand so, but only making the supposition, if they wanted to have gone off, they would have done so.

The Judge Advocate reads it again.

Sir W. Burnaby. Must you have my opinion.

Prosecutor. Yes, your opinion, if they had been disposed to avoid action could they not?

The Admiral. Let the first question be answered.

Court. Read that question again—the question being read, the witness said, I think it very possible they might.

Admiral Montagu. Do you know they did not stand all night upon that tack?

President. I thought you said before, you brought too, and knew nothing of them.

A. I was going to assign my reasons.

The Judge Advocate read the questions again.

A. I say they did not stand, because at day break in the morning they were a-head of our fleet.

Judge Advocate. They did not.

Admiral Montagu. I have, as a Member of this Court, asked a question. I must beg leave to have the same indulgence as the Prosecutor, and Prisoner, to have my questions answered as well as theirs. I, as a Member of this Court, am to judge for one and the other, I can have nothing but the best of his knowledge; I desire to know whether you know of your own knowledge, the French fleet did not stand upon that tack all night?

A. I think they did not, because at day break in the morning, it being very thick foggy weather, I found myself a little to leeward of the French fleet, they then being a-head at some distance, and to windward of our fleet.

President. At what distance was you from the English fleet in the morning?

A. I do not justly recollect.

Q. You say you brought too by signal?

A. Yes.

Q. Can you give an account in the morning, how the French fleet was situated?

A. My ship brought too a great distance a-head of our fleet.

Q. When did you make sail afterwards?

A. At half past three, when Admiral Keppel made the signal for the fleet to form the line.

Q. I ask you what distance you was from the English fleet, that you could give an account of the French fleet?

A. I don't immediately recollect.

Q. I ask in consequence of that, what time you made sail?

A. At day light in the morning.

Prosecutor. In the morning had not the French fleet the weather gauge of the English fleet, and placed it between them and Brest?

A. The wind was about N. W. and by W. they were to windward of us I said, and they must have been to the westward, the wind then being N. W. and by W.

Prosecutor. The British fleet being then to leeward, and the wind at N. W. and by W. were not they between the French fleet and Brest?

A. Yes, Sir, of course.

Q. They were to the eastward?

A. No, Sir, we were between Brest and them.

Q. Was not the British fleet between them and Brest?

A. Yes.

Admiral Montagu. When you brought too at night, the French fleet were rather to leeward of our fleet?

A. Yes.

Q. In the morning when you made sail, you say the French fleet were to windward of the British fleet—do you know, of your own knowledge, whether they came there from working to windward, or by the wind shifting?

A. The wind shifted to the northward.

Judge Advocate reads the question.

A. I cannot immediately answer that question, any more, than that the wind shifted to the northward.

Q. Did that bring the French fleet, so much the more to windward or to leeward?

A. I don't recollect the bearings of our fleet.

Prose-

Prosecutor. I ask, if he does not know, or has reason to believe, that the French fleet tacked after it was dark, and carried a pressed sail all that night upon the larboard tack; one of the ships in the morning appearing to have carried away her fore topmast; the whole of the French fleet at day light in the morning being a considerable distance a-head of the British fleet.

President. Do you remember that circumstance?

A. I did not see the ship, I only remember it being spoke of; they certainly must have tacked, or wore, or stood close upon a wind, upon the larboard tack, from the position in which they appeared in the morning.

Court. If they had carried a pressed sail all night, would they have been in sight of you in the morning?

A. As they wore while to windward of us, they must have been, because they got some miles right in the wind's eye.

Q. But our fleet was laying too?

A. But they worked directly to windward, and therefore possibly they might have been in sight.

Judge Advocate reads the question, Whether they would have been in sight in the morning.

A. I did not see above two or three early in the morning, and they were to windward, and the few hours that they luffed, I think they must have carried a pressed sail to have got so much in the wind's eye of us.

Prosecutor. When you did see them in the morning, what sail did they appear to have set?

A. I do not recollect the sail they had set, it seemed to be sail suitable to the weather.

President. What sort of weather had you?

A. It was very thick weather.

Court. Did it blow fresh?

A. As near as I can recollect, I think it blew rather strong—I do not immediately recollect—I think it was exceedingly thick weather—I do not recollect the strength of the wind.

Prosecutor. At what time did the French fleet tack in the morning and come upon their starboard tack?

A. I don't recollect, I know the time we tacked.

Q. Did it not blow very fresh all that night, and that morning, with a high sea?

A. I think it blew rather fresh in the night, but I before said, I did not recollect the strength of the wind.

Q. What sail were you under in the morning at day light when you made sail?

A. I was laying too.

Q. When the fleet made sail, were you under whole topsails, single reefed topsails, double reefed topsails, or close reefed top sails?

A. I do not recollect the immediate sail—but under easy sail.

Q. How many reefs had you in your topsails—were they close reefed, or single reefed, or double reefed—or your top gallant sails set, that we may judge of the weather?

A. I had two reefs in my topsails, at half past six; I then let my second reef out.

Q. You said it blew fresh in the night?

A. So far as I recollect it did—I before observed I was under necessity of laying to, owing to my going faster than the rest of the fleet.

The Court adjourned 'till Monday morning ten o'clock.

The Fourth Day's Proceedings, Jan. 11, 1778.

Court. Sir W. Burnaby, Is your log-book here?

A. No, neither the Master nor Lieutenant are here—They were both summoned to attend, but were countermanded—I beg leave to recur to some part of my evidence given yesterday, about the situation of the enemy.

A. It was read—The French fleet must be to eastward, we being to westward, standing to, and upon our larboard tack.

Q. How were the French fleet situated that afternoon; were they to eastward, or leeward, or how otherwise situated?

A. They were to the eastward of us a-head, or rather to leeward.

Prosecutor. I desire the two last questions may be read.

Q. Did it not blow very fresh all that night, and in the morning, with a high sea?

A. I think it blew strong in the night, as I said before—I don't recollect the strength of the wind.

Q. What sail had you when the French fleet made sail?

A. I had two reefs in my top-sails.

Prosecutor. Whether the French Fleet, by having got to windward of the British Fleet, the British Fleet was not between them and Brest.

A. They were to the windward of us, the wind then N. W. by W.

Q. Whether during that day it did not appear that the French were collecting their ships together, and endeavouring to keep their fleet in a line of battle.

A. I think they were.

Prosecutor desired Sir W. Burnaby might be allowed to peruse his log, to answer the next question relative to the wind and weather on the 25th and 26th.

Sir W. Burnaby. I shall endeavour to answer as the questions are proposed.

Q. During those days, the 25th and 26th, was it not for the most part fresh gales and squally, with a high North wind, and a swell.

The Admiral. That is putting the question into the witness's mouth.

Prosecutor. I say, was it, or was it not so?

A. It was fresh gales, and squally.

Q. You are desired to look at the log.

A. I have.

Q. What sort of weather was it—the answer is—fresh gales and squally.

Q. What seas?

A. It does not recur to me—there was an extreme heavy swell.

Q. What sail did you put?

A. Such as was usual.

Q. Was it such a sea, as is usually attendant upon the weather?

A. I don't recollect—there was an extreme heavy swell?

Q. Does Sir W. Burnaby say, or mean to say, that he does not remember it was any remarkable great heavy swell; such a sea as is usual with fresh gales, and squally.

Admiral Montagu. It is putting the answer, by a negative, into his mouth.—The question is to be asked properly, and his own answer taken by the Judge-Advocate; and that, in my opinion, should stand upon record, and not be altered.

The question and answer taken above read again.

Prosecutor. Was it such a sea as is usually attendant upon such weather?

A. There was, and I said so before.

The Judge-Advocate then produced a paper of signals, and said, those are some signals which you sent for to Admiral Keppel, which he has been so obliging as to send.

Q. Did

Q. Did the French fleet during those days, keep the weather gauge?

A. Yes, they did.

Q. Did they carry such sail as to preserve their line of battle?

A. I generally observed them in a line of battle.

Q. And did they preserve nearly the same distance from our fleet?

A. I think they rather increased their distance from our fleet.

Q. At times when the weather moderated, did the French Admiral crowd sail away or occasionally shorten sail for better perfecting his line of battle?

A. At times, they seemed to carry a press up sail, and tolerably well preserving their line, at other times they went under an easy sail; seemingly to perfect their line.

Q. With the wind and sea, as it then was, do you think ships could have fought their lee lower deck guns?

A. I think it would have been attended with some risk if they had attempted it.

Q. Could ships have fought their weather lower deck guns, or part of them?

A. I think they might have fought part of them.

Q. Then would it, or would it not, for those reasons, have been disadvantageous to the French fleet to have borne down and attacked us on those days?

A. I think it would have been disadvantageous to them, as far as I am able to judge.

Q. In the morning of the 27th of July, was the British fleet scattered, extended, and dispersed?

A. They were somewhat dispersed.

Q. Do you remember a signal being made on board the Victory in the morning of the 27th, for several ships of my division, the Vice-Admiral of the Blue's division, to chase to windward?

A. To the best of my knowledge between nine and ten o'clock, the signal was made for some ships to chase, but what ships I do not know.

Q. Was that signal to chase to windward?

A. I do not recollect, but the ships seemed to make sail to windward.

Q. Were the ships that did chase of the Vice of the Blue's division?

A. I was at so very great distance from our ships, and so near the French fleet, I could not discern it.

Court. Did you observe any of them to make more sail upon the signal being made?

A. They appeared to have more sail out.

Admiral Montagu. He said between nine and ten, a signal was made for some ships to chase, but what, he does not know; give me leave to ask you a question, that is, when you saw the signal for the ships to chase between nine and ten o'clock, did you observe any of the British ships make more sail than they had done before?

A. To the best of my knowledge several a-stern did.

President. If you say you don't know the signal for the fleet to make more sail, how do you know it?

A. Because it was mentioned on board my ship, while I was upon the quarter deck, my attention was taken up in looking out.

Q. You took it from your officer, you don't know of yourself?

A. I don't know at this moment the particular signal, but it is a matter I have no doubt about.

Q. Did you yourself see any ships a-stern make more sail in consequence of any signals being out from the Admiral to chase?

A. I observed some ships in the rear of our fleet to make more sail.

Q. Was there any mention made of that signal in your log?

A. No, there is not.

Q. At that time did the British fleet tack altogether by signal on the 27th, and stand towards the French fleet?

A. I do not recollect.

Q. Is there no notice taken of that in your log-book?

A. No, Sir.

Q. Did the Admiral make a signal for the British fleet to form a line of battle a-head, or on any part of the compass, that day before the engagement began?

A. I do not recollect there was.

Q. At what time did you observe the French fleet to be in a regular line of battle?

A. Tolerable early in the morning.

Q. Did the Admiral make the signal for battle whilst the British fleet was dispersed? whether the British fleet was scattered, or extended, and dispersed?

A. They were somewhat dispersed.

Judge Advocate read the question again.

A. The signal to engage was made about half an hour after eleven, our fleet then seem'd scattered.

President. He said they were engaged, do you recollect who began the engagement, whether the French, or our fleet?

A. The French.

Q. Do you know the hour in the morning when the French were in a regular line of battle.

A. They appeared to me to be pretty well formed.

Q. Do you know the hour?

A. About eight o'clock.

Q. Did you observe some of our frigates and fire ships being exposed to the enemy's fire before they could get out of the way?

A. Both the fire ships, the Proserpine, and my frigate the Milford, before they did get out of the way.

President. Do you remember whether the signal was made for battle before the French began to fire, or after?

A. It was after.

Q. How long?

A. I suppose the space of seven or eight minutes.

Q. Did the French, by attacking the British fleet whilst in no line, but somewhat dispersed, render it impossible to engage ship to ship, or to bring on a general engagement?

A. From their position before, as I observed, somewhat scattered, as far as my little experience will permit me to say, it prevented our ships engaging ship by ship nearly at the same time.

Q. If the Admiral had not advanced towards the enemy, or though his line of battle was not regularly formed, could he have brought the French to action, had he waited for forming the line?

A. I should think not, if the French had been disposed to get away.

Q. Were the French close hauled, or did they bear down to oppose the British fleet, ship to ship; they, the French, being to windward of the British fleet, and had it in their power so to do?

A. I thought they appeared to keep a little from the wind just about the time of their coming to action, a very little.

Q. Did you say a very little?

A. Yes.

President. Do you remember what sail the French were under when they first began the action?

A. I do not recollect.

G

Q. Do

Q. Do you recollect whether they had their fore sails down.

A. I believe they had.

Q. Had they their main sails up?

A. I don't recollect the main sail, I don't recollect immediately the sail, their fore sail I think was down.

Q. The question is, do you recollect what sail the French were under when they first began the action?

A. I do not recollect.

Q. Had they their fore sails down.

A. I believe they had.

Q. Were their main sails set.

A. I am not certain.

Q. You have said the French kept their ships a little from the wind, how many points?

A. I do not know.

Q. Was it to stretch a-head of our fleet, or keep to windward?

A. Their bearing away could not be with an intention to keep the wind.

Q. Had the French fleet lain too, to receive the British fleet, would not the van of our fleet have reached the van of the French fleet, by which a more general action would have been brought on?

A. Yes, as far as my judgment—to the best of my judgment.

Q. What part of the French fleet did the van of the British fleet fetch, as the wind was?

A. I think it was about the fourth or fifth of their van.

Q. Then, upon the whole, you say, the French fleet edged down and brought on the engagement?

A. The van of their fleet, by edging down a little, brought those ships sooner into action.

Q. How long, and how far did the Victory continue to stand after passing the sternmost of the French fleet before she came and stood towards them again?

A. I believe it might be about twenty-five minutes, I am not very certain.

Q. What distance does he estimate she was from them, when she did wear?

A. I am not able to determine.

Q. Did you observe the signal for battle being hauled down while the Admiral was standing towards the enemy, or from them.

A. I think it was a little before the Victory wore, but cannot charge my memory.

Q. Did you observe the Admiral to shorten sail and unbend his main-top-sail, whilst standing towards the enemy?

A. I do not remember.

Q. Did you observe the main-top-sail unbent at all?

A. I do not recollect.

Q. Did the Admiral wear again and stand from the enemy?

A. The Admiral wore and stood upon the starboard tack, standing from the enemy on the same tack; I rather mean to say upon the same tack, being then a-head of the enemy, the Admiral wore and stood upon the starboard tack, being then a-head of the enemy upon the same tack with them.

Q. Did you, at that time, from those motions of the Admiral, conclude that he did not intend to re-attack that day?

A. No, I cannot say that I did.

Court. When the Victory wore first, did all the ships on the starboard tack a-head of her wear?

A. I do not know.

Q. Did the Admiral wear by signal?

A. Yes, I think he did.

Sir W. Burnaby. Do you mean the first time?

Q. The first time?

A. I don't know they wore twice.

Q. Did the Admiral wear by signal the second time of his wearing?

A. Yes, I think he did.

Q. How long was the Victory on the larboard tack?

A. I do not justly recollect.

Q. Did you see any ships on the larboard tack with her?

A. I think I did.

Q. Was it the whole of the fleet, or only part of the fleet?

A. A part of the van.

Q. The van of the Admiral's division, or of the fleet?

A. The van of the fleet.

Q. Did you at the time of those motions of the Admiral, conclude he did not intend to re-attack that day?

A. No, I cannot say I did.

Admiral Montagu. Do you think it would have been prudent in the Commander in Chief to have renewed the action till the ships that had been engaged were all put in a proper condition to engage again, especially as night was advancing.

A. I do not think I am a competent judge.

The questions being read, the witness altered his answer—Did you, at the time of those motions of the Admiral, conclude he did not intend to re-attack that day?

A. I say I did not draw those conclusions.

Q. I should be glad to know where the Milford was when the action began?

A. I was a pretty while up to windward, and a-stern of several of the line of battle ships, I suppose five or six.

Q. Was you in your station?

A. I do not know that I was out of my station; as there was a general chase I got into my station.

Q. Was you in your station?

A. I beg leave to make some comments upon that. I did not do wrong, I apprehend, in being where I was; I had two stations, one when in a line of battle, and one when I was not; upon Admiral Keppel's weather beam when no line of battle, on Sir Hugh Palliser's when there was?

Q. Was you chasing?

A. I was chasing, and out of my station at the time you mention.

Court. What distance was the Milford from the ships that first began the action?

A. It might be about a mile a-stern, but at that distance of time I cannot be certain.

Prosecutor. Did you observe the French fleet to break up their line of battle, and be in confusion for some time?

A. They seemed to be in confusion a little after the action ceased?

Q. Was this whilst the Admiral was standing towards them?

A. I think it was whilst the Admiral was upon the larboard tack, standing towards them.

Q. Had the Vice-Admiral of the Red, before that time, with his division, doubled on the Rear of the enemy, and was he to windward of them?

A. I think he was on the larboard tack, to windward of them?

Q. Could that division have bore down upon the enemy, if the Admiral had advanced with the rest of the fleet, and kept the signal for battle flying?

A. As being to windward certainly they could have bore down.

Q. If the Admiral had made the signal appointed by the thirty-first Article of the Fighting Instructions, for ships on the starboard tack in the line of battle to have taken the lead, could that division, from their situation, have complied with that signal?

The

The Admiral. I must beg the Article of the Fighting Instructions may be read to him.

Court. Do you know that article without looking at it?

A. I have this moment read it.

The Court desired the thirty-first Article of the Fighting Instructions to be read, which was read by the Judge Advocate accordingly, then put this question—You are first asked if you know what the article is; the answer you give is, you have this moment read it; then it was ordered to be publicly read by the Court, then the question as before read, If the Admiral had made, &c.

A. To the best of my judgment, the Queen, Sir Robert Harland's ship, could have obeyed a signal for bearing down, but I know not how many could have followed.

Prosecutor. I say, if the enemy had been so re-attacked by the Vice-Admiral of the Red and his division bearing down, and the Admiral advancing with the rest of the Fleet, would it not have prevented the enemy from recovering from the confusion they were in, and from forming a new line of battle?

A. I judge it might have prevented them from forming a line upon the starboard tack, as they were nearly upon a wind, so soon upon the starboard tack as they did.

The President objected to the question and answer, and said, Sir William was a young man, he would have other officers more able to answer it.

Sir W. Burnaby. It is too much for me to answer, I am not competent to judge of it; it is too much for me to answer to a question of such importance.

Judge Advocate reads the question again, and the answer that had been given, when Sir W. Burnaby said, I have not done, I would add, provided our ships were then in a situation and condition to renew the battle, but farther it is impossible for me to be supposed a competent judge.

Q. Did not the French fleet form a new line of battle without being molested?

Admiral Montagu. The Admiral admits that, I dare say.

The Admiral. Yes, the Gentlemen are more versed in cross-questioning than I am, makes me not say much upon it, though I am not willing to assist the accuser in any thing.

The question read by the Judge Advocate.

A. I think they did.

Q. After the van and center division has passed the French fleet, did you take notice of the Vice of the Blue, and the ships of his division, that remained engaged?

A. The smoke was too thick for my clearly discerning them.

Q. As far as you did take notice of them, did they appear to you to be engaged or separated from each other, or connected together?

A. As far as I can recollect, as soon as they came out of action, they seemed separated.

Q. Did you observe the Formidable as soon as she came out of action, wear and lay her head towards the French again, and lay so for some time?

A. I cannot say that I saw it myself.

Q. Did you see her lay her head towards the enemy soon after she came out of the engagement, though you did not see her actually wear?

A. At this distance of time, I cannot say I recollect that circumstance.

Q. Does he not recollect seeing her soon after she came out of action, when she was the only ship between the rear of the enemy, and the Victory?

A. I cannot say I do.

Q. Did you, at any time, Sir, observe three of the enemy's ships standing towards the Formidable soon after the action?

A. It does not occur to me that I did.

Q. Do you remember the Admiral a second time to stand from the French fleet?

Q. When the Admiral did wear to stand to the French fleet, do you remember her passing under the Formidable's stern?

A. No, I do not.

Court. Did you ever say that the Admiral wore and stood from the French Fleet?

A. I said the Admiral wore and stood upon the starboard tack, by which he came a-head of the French Fleet.

Court. Did you ever say the Admiral wore, and stood from the French fleet?

A. I have not said so.

Prosecutor. When the Admiral wore, and stood on the starboard tack, being then a-head of the enemy, and upon the same tack, whereabouts was the Vice-Admiral of the Blue at that time?

A. Some distance a-stern, and to windward of our ships.

Prosecutor. Did you observe the signal being made for ships to windward to bear down?

A. I cannot say I saw the signal thrown out, I did not see the signal,

Prosecutor. Did you see it after it was out?

A. I did not see it as I recollect myself.

Q. Is it marked in your log-book?

A. No, it is not noted; I mentioned at four.

Q. Did the Admiral with the fleet continue to stand on the starboard tack till night?

A. Yes, I think he did.

Q. Can you not say what sail he carried during that time?

A. I think he had top-sails and fore-sail, but I am not very certain; the greater part of the time is understood, I suppose.

Q. From the time the Admiral wore and stood on the starboard tack, did the French fleet begin to form into a line of battle upon the same tack?

A. I think it was about a quarter of an hour, to the best of my recollection, that the French began to form their line a-head after Admiral Keppel had made a signal to form a line a-head on the starboard tack.

Prosecutor. Please to explain whether he means by a quarter of an hour after the Admiral had made his signal to form his line upon the starboard tack—whether he means a quarter of an hour after the Admiral had been upon the starboard tack?

A. The Admiral had made the signal to form the line a-head, before he wore and stood on the starboard tack.

Q. In that afternoon, while the Admiral was standing on the starboard tack, did the Vice-Admiral of the Red and his division bear down into the Admiral's wake, and at what time?

President. Stop at wake.

A. At thirty-five minutes past four, Sir Robert Harland's ship was then in the wake of Admiral Keppel, and most of the ships of his division, to the best of my recollection.

Court. Do you remember how many ships Vice-Admiral Harland's division consisted of?

A. Ten, I think.

Q. What number do you think bore down with him?

A. I don't recollect.

Court. Pray where was the Vice of the Blue, and his division?

A. They appeared to be at some distance a-stern to windward.

Prosecutor. Was not the proper state of the Vice of the Red, according to the signal for the line of battle then flying, being upon the starboard tack, a-head of the Admiral?

A. They

A. The signal was first made to form the line of battle a-head on the larboard tack: I don't recollect any alteration of signal when they were on the starboard tack: about half past four Admiral Keppel made my signal to come within hail of him, which I soon afterwards did, and received orders from the Admiral to acquaint Sir Robert Harland that it was his directions that he should make all the sail he could as soon as possible, and lead on the starboard tack; and make a signal for his own division to come in his wake.

Prosecutor. During that afternoon, did you observe one of the Admiral's own division laying a considerable distance a-stern of him in his wake, upon which the van of the French line fired?

A. I do recollect the Vengeance, I think Captain Clements.

Q. What distance do you think that ship was a-stern of the Victory then?

A. As near as I can recollect nearly two miles.

Q. Was you at that time under any apprehensions of any danger of her being cut off by the French fleet.

A. I did at the time express my opinion of my apprehensions upon the Milford's quarter deck, that she would have received the fire of the French fleet as they passed under her lee; I thought it very probable she might have been thereby destroyed; the Vengeance then laying in a very shattered condition, and at that time seemed unable to make sail.

Q. The night of the 27th, in what situation was you, Sir, with respect to the Victory?

A. Some distance a-stern, and to windward, withal, as near my station as I could.

Q. Did you observe the French fleet to make any signals during that night by sky rockets, or otherwise?

A. I think I saw one, it rather appeared like a false fire; it was some particular light which I judged came from the French fleet, but it did not go up aloft.

Q. At what hour.

A. Nearly about ten.

Q. Could you at that time see the bodies of the ships of the French fleet?

A. Owing to the darkness and distance from them, I could not.

Q. Did you perceive them to bear away that night?

A. I did not.

Q. When you saw that light, what did you conclude from it?

A. I don't recollect forming any conclusion.

Q. Was the French fleet, or any part of it, in sight early the next morning?

A. About four o'clock some of the French fleet appeared in sight to leeward.

Q. In the morning or afternoon?

A. At day-light in the morning.

Q. How many?

A. I do not know the numbers; there were several; I could easily discern three or four.

Q. Were those three or four near to the British fleet?

A. I do not recollect the distance they were at.

Q. Did they appear to you to be line of battle ships, or frigates?

A. I don't recollect which.

Q. Did those ships crowd sail from the British fleet?

A. They seemed to be steering away to the eastward; they seemed to be going from the British fleet—I don't recollect they went to eastward, they seemed to be steering from the British fleet.

Q. Was the signal made at this time by any of our ships for seeing a number of strange ships?

A. I did not see it myself.

Q. Did the British fleet, or any part of them, pursue these ships that were in sight?

A. I did not observe that any did.

Q. Did the Admiral wear and lay the fleet early in the morning with their heads to the northward?

A. At about eight o'clock the fleet wore, and lay their heads to the northward.

Q. What latitude was you in at noon on the 27th, according to your reckoning?

A. The latitude of Ushant about 40.

Q. What distance from Ushant?

A. Nearly about 35 leagues by my account.

Q. Is that according to the reckoning you kept up to that day, or a back reckoning made after making land?

A. It was from the daily reckoning, and not a back reckoning.

Q. What was your latitude at noon on the 28th?

A. About 48: 27.

Q. How was the wind in the morning of the 28th?

A. At eight o'clock, when we wore, it was fresh breezes and hazy.

Q. How was the wind in the morning of the 28th?

A. About W. by N.

Cross-Examination.

The Admiral. I did not mean to have given you any trouble now with this witness, the service of the frigates is so active, and the attention of the Commander so taken up with the management of them, especially of that particular frigate.—I may have occasion to call for him when on my defence—but there are one or two things requisite to ask him, which I will now ask him if you will give me leave.

President. The Court wishes you to reserve yourself a little.

Admiral Montagu. We are now come to the two days in which Mr. Keppel is charged with not doing his duty, and other breaches of conduct—therefore I shall beg leave to ask Sir William Burnaby, whether during the day of the action to his knowledge, Admiral Keppel negligently performed the duty imposed on him.

A. It is a question of the greatest importance, and is far above me to be able to determine. I have said before, in other cases, where I have been asked, I did not think myself a competent judge: it appears to me, it comes before this Court for them to judge of the facts given in evidence—Admiral Keppel is a very brave and gallant officer, and it does not become me to give my opinion, when I cannot be supposed to be any sort of judge.

Q. You can say yes or no?

A. I say, as I said before, when I have been asked similar questions I have made similar answers. I don't think it a question proper to ask me, who am an officer so very young in the service. I exceedingly respect him as a man of excellent character, and a worthy gentleman: I think him a gallant and brave man, and that I say from my heart.

Prosecutor—objected to the question being put again.

Admiral Montagu. How are we to get an answer to that question but from the officers in the service, who are supposed, as they were present, to be judges of that day's transaction?

A. Nobody entertains a higher opinion than I do, of the bravery of that worthy man.

Admiral Montagu. We are trying Admiral Keppel upon five different heads, which are mentioned in the articles; in which he is not only charged with behaving negligently, and not doing the duty imposed on him, but he is charged with not doing his utmost to take, sink, burn,

burn, or destroy the French fleet that had attacked the British fleet; he is also accused, that he has been guilty of bringing disgrace upon the British flag, that he did not pursue the enemy, and that the British fleet run away from the French: these are questions which I shall ask of every one of the officers, I only ask it to the best of his knowledge?

Prosecutor. I beg leave to interpose a few words; Sir William Burnaby very modestly, and I presume very decently, wished to decline giving an opinion; it being a matter of opinion, I presume he is not to be compelled to give it; as he has very decently, being a young officer, said he was not a competent judge; and it is a matter of high importance, of which the Court will judge amongst themselves and only themselves; they are authorised to judge of the facts that come before them, and therefore, if the evidence declines giving an opinion, I think he should not be compelled to it.

Admiral Montagu. I don't ask him as to opinion only, he knows other things of his own knowledge; he knows when the Vice of the Blue comes out of the engagement; he knows when he is left by himself, and he knows when the Vice of the Red bears down in his station according to the Admiral's signal: how are we to form a judgment with respect to the Admiral's conduct on that day, but from the opinion of the officers of the ships that commanded there; and if every officer has as much modesty as the evidence now at the bar, it is impossible we should ever come at the facts alledged against the Admiral of the fleet, and he must stand to all the world, charged with not having done his duty; that he has neglected it, and that he has forbore to do the utmost in his power, to take, sink, burn or destroy the French fleet that had attacked the British fleet; and that he absolutely run away from the enemy; I don't enter into any thing more; but it respects the five charges against him, upon which I beg leave to observe and think the Court has an undoubted right to ask this question, and I shall never give up that point myself.

[The Court withdrew to debate upon the point, whether the question should be put.]

Judge Advocate. The members having retired, after some time spent, returned into Court, when it was agreed the same question should be put to the witness.

Prosecutor. I beg a few words previous to the question being again put; if you will be so obliging as to permit me to have the Judge Advocate read them, and offer a few words in consequence of the resolution of the Court.

President. We must retire upon that if you desire it.

[The Court objected to his request.]

Prosecutor. Then I only beg leave of the Court to understand, that I dissent from their asking or compelling the witness to give his opinion upon the charges against Admiral Keppel, and they should not be entered into the minutes, upon the ground such a question involves the opinion of the witnesses with the judgment of the Court.

President. A question has been put by one of the Members, and we must now go on, or else we must withdraw, to know whether you have a right to offer an objection: go on with the question if you please.

Admiral Montagu's question read to him.

A. I am not master sufficient to give an answer.

Q. Give an answer as near as you can?

Sir William Burnaby. Be so good to mention that question again?

Judge Advocate reads it.

No answer being given, the Court desired his former evasive answer might be put down in his own words; the short-hand writer for the Judge Advocate, was desired to read the answer, which he did: the short-hand writers for the Admiral and Prosecutor, were severally asked, whether it agreed with their notes, which they answered in the affirmative; then the Judge Advocate read them to the Court.

Q. to *Sir William Burnaby.* Is that your answer?

A. Yes, Sir.

[The Court were going to adjourn]

The Admiral said, there are some few things I should wish to put at the remainder of this day, but I wish not to keep you too long.

Q. Had the frigates or fire-ships any men killed by the fire of the enemy, on the day of the action?

A. I had none, nor do I know whether any of the rest of the frigates or fire ships had?

The Admiral. The reason why I complicated that question was, he answered for other frigates being within gun-shot of the enemy as well as himself.

Q. Was the Admiral going large or by the wind, when the signal in the 31st article of the fighting instructions is alledged to have been proper to be made?

A. I do not recollect.

Q. Can you recollect the Admiral being upon the larboard tack, with his head towards the enemy?

A. Yes, Sir.

Q. Then inform the Court whether the Admiral at any one time, while he was upon the larboard tack, did lead large?

A. I cannot answer for certain, whether he did or not.

Q. I must ask Sir William Burnaby, where he was when I laid my head towards the French fleet?

No answer given.

Q. You are looking at minutes, were they taken at the time?

A. Yes, Sir, from the log.

Q. Do you swear to that log?

President. Do you swear to the minutes you took?

A. The greater part of them were taken directly, but it is not amongst them I have now; I have not minuted it.

Q. Not where I was?

A. Because I do not recollect the immediate time you did wear, it might be about two o'clock; I followed you, Sir.

President. We don't ask the time; when the Admiral did wear, where was you when he wore?

A. As far as I recollect, I was some distance a-stern and to leeward.

Q. Then I must ask Sir William, whether he steered large at that time, or kept close to the wind?

A. If I recollect, I was going on upon a wind on the starboard tack, as far as I recollect, or nearly upon a wind on the starboard tack.

Q. I would ask you then, were the French fleet forming the line near the time the Admiral first made the signal for the line, after wearing and laying his head towards the enemy?

A. I beg leave to refer to a similar question on what I have said on that head; a little time ago.

Judge Advocate read the last Question over again without going back to the minutes, to which he answered, to the best of my recollection the signal was made to form the line of battle, before the

the French had; Admiral Keppel had made a signal to form a line of battle a-head upon the larboard tack, before the French had formed their line.

Q. Then you don't recollect they were forming their line, drawing their one two or three ships, out of that body of ships you have described to have been in confusion; I beg you may understand me distinctly: when I say forming a line, I mean drawing in a line, the body of ships you before described to be in a confusion?

A. Yes Sir, I do recollect.

Q. I will put it clearer to you. At the time you described them to be in confusion I mean?

A. Soon after that I observed they began to do, what you have mentioned, to form upon the starboard tack.

Judge Advocate. Q. You don't recollect they were forming their line, and drawing their one, two, or three ships out of the body of ships, you described being in confusion?

A. Soon after that to the best of my recollection, I observed the French forming their line upon the starboard tack, to the best of my recollection.

Q. Soon after what time?

A. After they were in that confusion, I observed a few of their ships drawing out from amongst the rest, standing upon their starboard tack.

Q. At what time?

A. I don't recollect the time.

Q. The gentleman has mentioned the confusion of the French fleet, what was that confusion, was their fleet at that time at all dispersed?

A. One ship was gone off.

Q. Were they at all dispersed?

A. No, the greatest part of them were pretty close together.

Q. Whether the English fleet were not dispersed?

A. I think they were.

Q. Did you while you was standing upon the larboard tack, see any one ship of the line agreeable to the signal for battle, either a-head or a-stern of the Victory?

No answer.

It is immaterial, he said he was upon the starboard tack, and that the Victory was upon the larboard tack.

Q. Was any one ship a-head or a-stern of the Victory, conformable to the signal for the line of battle then flying?

After that question had been repeated, three or four times, he answered, I cannot say I observed it.

Q. You have been questioned relative to Sir Robert Harland, how far was Sir Robert Harland at the time you have described him from you, or how far was the Victory from Sir Robert Harland's flag, at the time you say he might have bore down, as you have been questioned to the 31st article?

A. How far from me or the Victory?

Q. From your own ship?

A. He was at some distance, but I don't recollect what.

Q. I desire no other answer than you chuse to give?

The question read.

A. I don't know what distance.

Q. Can you say how far Sir Robert Harland was from the French fleet?

A. No, I cannot.

Q. I must put you in mind, you have said, if he had led large he would have prevented the French fleet from forming?

A. I have so.

Q. What made you think so, if you don't know the distance Sir Robert Harland was

from the French fleet; what reason had you to say his leading large might have prevented the French fleet from forming in a line again so soon?

A. I beg leave to refer to the question Sir Hugh Palliser asked me, before I can recall myself, I will endeavour to recollect, and be as clear as I can, I may make some mistakes.

The Admiral. It certainly is an indulgence to allow a witness upon his cross examination to look back to what was said; I believe it is an indulgence.

Admiral Montagu. This has not been the practice of Court Martials, it is totally different to the forms of Court Martials, but what is granted as an indulgence to one, will be given to the other.

Witness. For the reasons I assign I hope it will be taken as no ill intent, as no ill intent is meant by it.

Admiral Arbuthnot. I can tell you what you said Sir, you said some of them might come down; it might have been so, you could not tell how many together; if they could have come down, they might have come down, you did not know they could you said.

A. I would not take up the time of the Court so long, but I am a young officer, and the multiplicity of questions must embarrass one, I will give as just answers as I can.

The Judge Advocate read the question to him as had been answered before; which was, If the enemy had been so reattacked by the Vice of the Red, and his division bearing down &c, &c. would it not have prevented the enemy from recovering and forming a new line of battle? The answer is, I Judge it might have prevented them from forming a line so soon upon the starboard tack as they did. Now, the question is, if you do not know the distance Sir Robert Harland, was from the French fleet; what induced you to say, or what reason had you to say his leading large might have prevented the French from forming a line of battle again so soon?

A. Because Sir, although I am not able to recollect the immediate distance yet still Sir Robert Harland with his division, and Admiral Keppel's division, (I think it was mentioned so,) provided they were in a condition, as I said said before, a proper condition to attack, I think it might have tended to have prevented their forming their line so soon upon their starboard tack.

The Admiral. Is that your answer?

A. It is the best answer I can give.

Q. I would ask Sir William Burnaby, how many ships Sir Robert Harland had with him of his division at this time?

A. I cannot recollect.

Q. And you have just before observed that you did not know Admiral Keppel, had any ships formed in the line of battle a-head or a-stern with him?

A. If that is my observation, I beg you will refer to it as my observation, whatever my observation was I wish it to be put down.

The Admiral. I wish this to be put down positively.

Judge Advocate. You have just before observed you did not know Admiral Keppel, had any ships either a-head or a-stern formed in a line,

Sir William Burnaby. Was that my exact observation.

The Admiral. I will ask you positively whether you saw any ships except the Victory itself; I will say, the Formidable too, looking to the enemy, that could give immediate support to the Vice Admiral of the Red had he led down, or if the signal had been made for him to bear down?

A. I

A. I do not recollect.
 Q. You do not recollect whether there were any other ships?
 A. I do not.
 Q. I ask whether there were any other ships?
 A. I believe there were, but I don't know what number.
 Q. You believe there were some other ships?
 A. I believe there were but very few.
 Q. Is that what you just recollect or from your log book, or what?
 A. It is what I endeavoured to recollect now.
 Q. I ask you positively; I desire you will give a positive answer, and when I go to a close question, to a positive charge, I must have a positive answer, say yes or no, which ever is in your breast to say.
 A. Not that I recollect.
 Q. That is your answer?
 A. Yes.

The Court Adjourned till Ten o'clock on Tuesday Morning.

The Fifth Day's Proceedings, Jan. 12th, 1779.

Sir WILLIAM BURNABY, further examined.

The Admiral. Question. Did you receive any directions from the Admiral on the afternoon of the 27th of July?

A. Yes, I did, the day of action.

Q. What time?

A. At a little past half after four.

Q. Please to relate what the directions were?

A. The orders I received from Admiral Keppel, were, to go without loss of time, to Sir Robert Harland, and to acquaint him the Admiral desired he would make what sail he could immediately, and lead the fleet upon the starboard tack, and to make a signal for his division to follow him and come into his wake.

Q. Did Sir William Burnaby proceed directly to Vice Admiral Harland, to deliver the Admirals orders?

A. Yes, without loss of time.

Q. Was Sir Robert Harland in his division directly, in the Admiral's wake, or a little to windward of him at this time?

A. I think they were nearly in his wake, but rather to windward.

Q. When you spoke to the Vice of the Red, can you inform the court how many ships there were at that time of his division, a-head of him or a-stern.—Sir Robert's division?

A. I do not remember.

Q. Did you in going with the Admiral's orders to the Vice of the Red, see the Vice of the Blue, and several of his division with him?

A. I do not recollect, as I was going from you to Sir Robert Harland, that I took notice, but sometime before that, being prevented from the view of those ships, by passing under the lee of our ships.

Q. Then they were not to leeward of Sir Robert Harland?

A. No Sir, I don't recollect they were.

Q. Then Sir Robert Harland, being to leeward of them, prevented your seeing them?

A. It was. There were several ships of Admiral Keppel's, and Sir Robert Harland's divisions prevented the view.

Q. Did the Vice Admiral of the Red, by making sail a-head into his proper station, in obedience to my orders, pass to leeward of the Vice Admiral of the Blue?

A. Yes, I believe he did.

Q. Did the Vice Admiral of the Red in getting into his station a-head, pass to windward of the Admiral?

A. To the best of my recollection he did.

Q. You have described the dangerous situation you observed the Vengeance to be in, two miles a-stern of the Victory, after the English fleet was standing on the starboard tack; at what hour was this?

A. I think it was near about five.

Court. In the afternoon, or when?

A. In the afternoon.

Q. Was Sir Robert Harland at this time making sail, in obedience to my orders?

A. I think he was.

Q. Was the Milford at this time, as near the Victory as she was to the Vengeance?

A. At the time you allude to, the dangerous situation she was in, I think I was much nearer the Vengeance than the Victory.

Q. After Sir Robert Harland had made sail at this time, what ships were in the Admiral's wake in the line of battle, a-stern of him in their stations?

A. I neither recollect the number, nor what ships there were.

President. Q. You allow there were some?

A. Yes, there were some, as I have before observed.

The Admiral. Were there two?

A. Undoubtedly, and more.

Q. I will not puzzle you about line of battle, but were there three?

A. Yes.

Q. At this time?

A. I think so Sir.

Q. I am not trying to set you wrong; this was a little before five?

A. Yes.

Q. What was the hour?

A. I said about five.

Q. Then about five, he thinks there were some line of battle ships a-stern, but does not know how many were a-stern of the Admiral?

A. I think there were some.

Q. Was it the Vice of the Blue, that was one of those ships?

A. I have before said, I judged it to be of Admiral Keppel's, or Sir Robert Harland's division.

Q. When Sir Robert Harland's ship interrupted your view no longer, where was the Vice Admiral of the Blue?

A. I think he was well a-stern, and pretty well to windward.

Q. What is the court to understand by the words well a-stern, and pretty well to windward? The witness had before the the last question was put, altered his answer thus; I think he was a-stern, and pretty well to windward?

Prosecutor. Sir William Burnaby's first reply was, well a-stern and to windward of him.

Court. Those were the first words?

A. I think they were a-stern, and pretty well to windward.

Prosecutor. If it would be saving the Court any time, and the Admiral trouble, respecting the question about the Formidable being a-stern, and to windward withal, I admit it.

The Admiral. Was the Vice Admiral of the Red when he was a-stern and a little to windward, closed in the line with the Admiral's rear?

A. At what hour do you particularly relate to?

Q. When you spoke to?

A. I said before, she was a little to windward of the wake of Admiral Keppel's ship the Victory, and closed very near to some of them.

Q. When

Q. When you hailed the Queen did you see the Vice of the Blue?

A. I cannot say I did; my attention being other-ways taken up.

Q. If the Vice Admiral of the Blue had carried his division into the Admiral's wake as so soon as the Vice of the Red had moved from it, would it not have given certain security to the Vengeance described in such danger, from the place where the Vice Admiral of the Blue has been described?

A. I should judge so, provided they were in a proper condition to go to action.

The Admiral. I don't ask you that.

President. Did you know at that time whether they were in a proper condition to go into action or not?

A. No I did not.

Q. From three o'clock in the afternoon of this day the 27th of July, till six o'clock, did Sir William Burnaby, in any part of this time observe any of the English fleet much to leeward before the beam, and upon the lee-bow of the Victory, immediately after we had got upon the starboard tack, that is between three and six?

A. I do not recollect that there was.

The Admiral. I have done with the 27th, as he has been examined relative to the first seeing the French fleet, I have but three or four questions to ask him of the 23d July, and the 24th by log.

Q. You have said in the former part of your evidence the French fleet was seen the 24th by log, did I call you that afternoon within hail?

A. Yes, Sir, you did.

Q. What orders did I give you?

A. You desired me to make sail and and to keep a-head of our fleet, between you and the French.

Q. Did you discover any motion in the French fleet that night, that enabled you to make a positive signal?

A. No I did not.

Q. Did I that afternoon pursue the French in a line of battle by signal by any point of the compass; and use endeavours to close in with them?

A. I recollect your carrying a preft-sail on the larboard tack, standing towards the French fleet, the van of our fleet being then in a tolerable line of battle.

Q. Was not the Vice of the Red, and his division a good way a-stern?

A. I do not recollect what distance they were.

Q. But not closed in together as the Vice of the blue, and the other blue division was?

A. It did not appear to me they were.

Q. Did I pursue the French fleet with a preft-up sail conformable to the worst sailing ships with me, to close and get up to the French fleet from the 24th in the morning, to the moment I brought them to battle, except the two times that I made the signal for the line of battle after they were seen in the morning?

Prosecutor. I don't think Sir William Burnaby has said you brought them to battle.

The Admiral. I must beg the indulgence of the court, that the accuser may not interrupt me.

Prosecutor. Upon occasions I have been interrupted, when I made use of words that have been considered as putting words into the witnesses mouth.

The Admiral. Sir, I am trying for my life and my honour that is dearer to me than my life, and I beg I may not be interrupted.

Admiral Montagu. The Admiral has a right to ask the question, whether he has said so or not.

Prosecutor. Upon divers occasions I have been

interrupted; I beg to observe with regard to honor and character, mine is at stake as much as the Admiral's; I value it as much, as it is of equal consideration to me.

The Admiral. *Q.* The witnesses may remember on the 24th my making the signal for the line of battle, between the hours of five and eight in the morning?

Prosecutor. He has not said they were brought to action.

Admiral Montagu. The witnesses saw them come out of the battle, we are in possession of the fact that they were in action.

The Admiral. Is it an objection about the French firing at me first or me at them?

Court. Yes.

The Admiral. That shall be just as he pleases; he may put the words the English came to battle, or the French fired at us first, it is no political question with me, I would have fired at the French if they had not fired at me.

The Admiral's last question to the witnesses read by the Judge Advocate.

A. I think I recollect it.

Q. Do you remember in the afternoon of that day that I made a signal for the line of battle?

A. Yes Sir, I remember about half past three the 24th by log you did.

Q. The 25th by log?

A. I will answer to the 25th, it was near about six upon the 25th.

Q. Do you remember the afternoon of that day I made the signal for a line of battle?

A. You always carried a preft-up sail and gave every proof to my Judgement of your very great desire to bring them to battle; with regard to preft-up sail I mean to be understood that I am not a judge how far that was proper, with respect to the other ships; Admiral Keppel gave every proof of his desire to bring them to battle.

The Prosecutor desired to ask some questions as he said new matter had been introduced?

Court. Whatever you please.

Prosecutor. I will first speak to the order the Admiral examined him, which was relative to the Vengeance?

Prosecutor. You have been asked relative to the time when you took notice of the situation of the Vengeance, inform the Court whether it was not after he had spoke to the Queen?

A. Yes it was.

Q. After you had spoke to the Queen did you make a stretch upon the larboard tack, or did you stand upon the starboard tack the same way the fleet was standing?

A. I spoke to the Queen when standing upon the larboard tack, and continued so for some time, but I cannot recollect how long, and then put about and stood on the starboard tack passing along to windward of several of our ships that were then formed, or tolerably well formed in a line of battle.

Q. By standing farther from the Admiral than the Queen was, did it afford you an opportunity of taking that notice of the situation of the Vengeance was in?

A. Yes it did.

Q. Is there not an appointed signal when the Admiral would have any particular ships stay by disabled ships?

The Admiral. I will admit that.

Q. Was any such signal made at the time?

A. I neither saw nor knew of any such.

Q. You have informed the Court you observed the Vice Admiral of the Blue well a-stern, and to windward of the Admiral's wake, did you take notice at that time of the situation of the Formidable respecting her sails and rigging?

A. I

A. I do not recollect the immediate condition of her, but as far as I remember she appeared disabled in her sails and rigging.

Q. Did she appear to be equally able to carry sail with the Victory at that time?

A. No I don't think she did, I don't remember that she was.

Q. Did not the Victory carry her top sails intire, and hoisted, and her fore-sails at that time?

A. I have before said that I believed the Victory during the greater part of the afternoon had carried her top-sails and fore-sails, but whether whole top sails I do not know.

Q. Did you observe the Vice Admiral of the Blue making any signal to the Victory that she could not keep her company?

A. No I did not.

Q. Is there any such appointed signal?

A. I think there is.

Q. Did not the Victory always out-sail the Formidable with equal sail?

A. According to the observations I made of the rate of their sailing I think she did.

Q. Then Sir, as you have informed the Court you observed the Formidable in a disabled condition, and the Victory in good order?—

Admiral Montagu. That has never appeared to this Court; that after the action the Victory was in good order.

Q. I will alter it, as you have informed the Court you observed the Formidable was in a disabled condition, and from the sail you have described the Victory did carry, do you suppose the distance between them was occasioned by the Victory sailing from her, or by any neglect upon the part of the Formidable?

A. The little sail the Formidable carried after the action could not possibly enable her to keep way with the Victory.

The Admiral. I agree to it.

Prosecutor. This will come out by and by when I examine the officers of the Formidable; therefore I will not trouble the Court any further upon this now.

The Admiral. May I ask one question?

Court. *A.* Yes

Q. It has been asked were any signals made by the Vice of the Blue, of not being able to go on with me, when Sir William Burnaby passed upon the larboard tack; if the Vice Admiral of the Blue had any message to send by you, was it in your power in a short time to have gone to him and have received his orders?

A. Had a signal been made by the Vice of the Blue to have spoke with me, I could soon have joined the Formidable.

Prosecutor. Whether the condition of the Formidable was not very apparent at the time?

A. I before mentioned she appeared to me to be a good deal disabled.

The Admiral. I did not intend to ask the Court any more questions; but I must trouble you upon the word disabled: was any top-mast, top-gallant mast, yard, or lower mast, or top-sail-yard carried away?

Prosecutor. It is admitted the masts and yards were standing.

ROBERT DIGBY, *Captain of the Ramilies,*
sworn.

Prosecutor. Do you remember the French fleet bringing to upon the evening of the 23d of July, upon the larboard tack about eight o'clock?

Admitted by the Admiral.

Q. Was the French fleet at that time to leeward of the British fleet, standing to southward upon the

starboard tack in a line of battle, or nearly so, as they appeared to you?

A. I recollect very well the English fleet bringing to, but I cannot say exactly at what time.

Q. Your answer to the rest of the question?

A. I recollect the French fleet passing to leeward of us, and part of them in a line of battle, whether they were all so or not, I cannot say.

Q. Do you mean to say, to leeward they were on the starboard tack?

A. Yes.

Q. Please to say whether that was their situation at close of the evening at dusk?

A. I cannot say, whether our fleet was brought to before the close of the evening, but at the close of the evening they were passing to the leeward of us.

Q. How was the wind then?

A. The wind was westerly.

Q. Upon what point?

A. I cannot recollect, and what makes it more difficult to recollect is, my minutes that were taken for me are carried abroad by a person who is gone abroad, and it rather confuses me, I see many mistakes in this copy, and therefore I set them aside, I cannot swear to them.

Q. With respect to the wind?

A. I think the wind was westerly; I have a copy, but it is incorrect, the wind by my log was first W. and by N. and I believe it was W. and by N. by my log; I cannot charge my memory with a thing so long ago.

Q. How did Ushant bear by your reckoning at noon upon the 23d?

A. By looking at the log I shall make so many mistakes, I beg you will give me leave to go by my memory.

Q. How did Ushant bear at noon upon the 23d?

A. Upon my word I do not recollect.

Q. The day we first saw the fleet?

A. I don't recollect.

Q. Have you any day's works of it; have you no account of it?

A. I have no account about me.

Q. When the French fleet were to leeward of the British fleet with their starboard tacks on board with the wind at west, was not Ushant then under their lee?

A. It was.

Q. Had you any opportunity of seeing the French fleet at any time during that night?

A. It was very dark and blowing, and I saw none of the French ships, but I saw some false fires made.

Q. In what situation was the French fleet the next morning from the British fleet?

A. I think they were to the northward.

Q. A little or a considerable distance?

A. They were a considerable distance.

Q. Had the French Admiral intended to have avoided coming to an engagement, would he not have continued to stand upon the starboard tack during that night towards Brest?

A. That is matter of opinion.

Q. I should be obliged to Captain Digby if he would give his opinion?

Admiral Montagu. You are told by the Court you may speak to opinion as well as facts; that the Prosecutor and Admiral may equally ask the opinion of witnesses.

Captain Digby. I beg not to give my opinion.

Prosecutor. If the French Admiral had continued to stand upon that tack all that night, with a wind blowing strong as Captain Digby has described, would they not the next morning have been near to the Port of Brest, and at a great distance from the

the British fleet, who lay the whole night with their heads to the northward?

A. They would have been nearer the Port of Brest; nay, I think they would have been farther from the English fleet than they were.

Q. But on the contrary, did not the French fleet gain the wind of the British fleet the next morning, and thereby place it between them and Brest?

A. They were to windward the next morning, and of course we were between them and Brest.

Q. Do you consider those motions of the French Admiral, as marks of his intention to avoid coming to an engagement, or of his intentions to do so when there should be a proper opportunity?

A. I did imagine at that time the French did mean to attack us.

Q. During the following day, that is the 24th, did it appear to you, that the French were endeavouring to keep their ships in a line of battle?

A. Yes.

Q. You have said it blew hard in the night, what kind of weather and sea was it during the next day?

A. As well as I recollect, it was rather more moderate.

Q. Do you recollect during the 25th and 26th, there was fresh gales and squally for the most part, or how was the weather, will he take the trouble to look over his log-book that is upon the table.

A. Sir, I have never looked at that log-book before, therefore it cannot refresh my memory; I have an account of the days in my pocket, as it is not taken by myself, and not made during the time, I don't know how to rely upon them; I see many mistakes and therefore I trust to my memory.

Q. Do you remember during the 25th and 26th it blew fresh and squally; how was the weather on those days?

A. I cannot be certain as to the exact time, but it blew fresh and squally part of those days.

Q. From your recollection of it blowing fresh and squally part of those days, was it attended with such sea and swell as is usual in fresh winds?

A. There was a swell, but I cannot recollect any thing particular one way or the other.

Q. From your recollection of the wind and weather, and the sea, from your judgement, could ships have fought their lee lower deck guns?

A. As near as I recollect, I could not have fought all mine most part of the time, but I cannot say as to the whole.

Q. As to the whole time does he mean?

A. The whole time.

Q. If the French fleet had bore down and attacked the British fleet, when they could not have fought all their lee lower deck guns—

The Admiral. He has not said they could not have fought them, but only spoke as to his own ship.

Admiral Montagu. He only spoke as to the Ramillies.

Prosecutor. If such ships as the Ramillies could not fight the whole of their lee lower deck guns—

Admiral Arbuthnot. He has not said that as to the whole of their lower deck guns, but only as to part of them.

A. Part of the time was squally, I will not be certain, it is so long ago, I cannot really recollect.

Q. If the French fleet had bore down and attacked the British fleet, and could not have fought their lee lower deck guns, would it not have been very disadvantageous to them?

A. That seems matter of opinion and depends upon their ships.

Q. Did it appear to you during those days, that the French endeavoured to preserve their fleet in a line of battle, as well as the wind and weather would permit, preserving their distance from our fleet?

A. It did appear to me.

Q. At times when the weather moderated, did it appear to you, that the French Admiral crowded sail in order to get away, or that he made sail and shortened sail occasionally, for the better perfecting his line of battle?

A. I saw many ships shorten sail and make sail at different times, but after the first night, I always imagined they went with a wish to avoid us.

Admiral Montagu. When you saw the French fleet making sail and shorten sail, in order to form their line, at the time the prosecutor has asked you, did you see the French fleet bring to, in order for the British fleet to come up to them?

A. I don't recollect ever seeing the whole of the French fleet brought to at any time.

Q. Did the British Admiral and fleet endeavour to get to windward of the French fleet while they were forming a line?

Judge Advocate. The prosecutor admits it.

Q. In the ship that you command or commanded that day, did you, or could you open your weather ports on the lower deck, and fought those guns if the French had brought you to action on the 24th and 25th?

A. Frequently I could not.

Q. Were the ports open any part of either of those days?

A. I believe some few of them were.

Q. Am I to understand you could have fought part of your lower deck lee ports?

A. I have not said so.

Q. Could you not have fought your weather guns at the time when you could not have fought your lee guns?

A. I believe I might have fought more weather guns than lee guns.

Q. Had the ship or fleet who could fight more of their weather or lee guns, a great advantage over the other?

A. The one that can fight most guns has most advantage.

Q. I will go to the 27th if you please. In the morning of the 27th, was the British fleet much extended, or scattered, or dispersed?

A. Much about the same as it had been the day before in the morning; first, in the morning, before any signal was made.

Q. Please to inform the Court how they were the day before?

A. As well as I recollect, they were not in the same kind of order as when they had never been in a line of battle; the divisions were separated.

Q. Do you remember a signal being made upon that morning on board the Victory, for several ships of the Vice of the Blue division, to chase to windward.

A. I did.

Q. Did that signal cause those ships to be separated from their flag, and that part of the fleet to be more dispersed than they were before?

A. Certainly.

Court. Was you one of those ships?

A. No, Sir.

Q. Do you recollect how many there were?

A. I think there were four.

Q. At what time did the British fleet tack altogether, by signal, to stand towards the French fleet?

A. I cannot be accurate in point of time. I think it was between nine and ten, or near eleven.

Q. Did the Admiral make any signal for the British

British fleet to form into a line of battle; that day, before the engagement began?

A. None that I saw.

The Admiral. I admit I made no signal to form a line that day. I beg, if the President pleases, it may be taken down. I admit I made no signal to form a line of battle upon the 27th, before I closed with and passed the French fleet.

Prosecutor. Did the Admiral make a signal for battle, while the fleet were so scattered?

The Admiral. That was at five in the morning; he says it did disperse them from the Vice of the Blue.

Admiral Montagu. The evidence has not said they were scattered.

The Judge Advocate read the evidence; concluded with these words: "He has not made use of the words extended or scatter."

Judge Advocate. The witness desires to explain an answer, which he gave upon a former occasion. I meant to say, the fleet was not in the same order, as they generally are, when there has been no line of battle. Before and after that line of battle, the division sailed in rather a different form; one division kept a-head, the other a-stern, to be more ready.

Prosecutor. Ready, for what? to form in a line, or what?

A. I should suppose so.

Prosecutor. Were not several ships of each of the divisions considerably to windward, and others considerably to leeward, of their flag?

A. I was too far from the red division to judge. With regard to our division, do you mean at eleven o'clock?

Q. Yes.

A. In the morning at eleven o'clock, those ships whose signals were made to chase, were considerably to windward. As I was to windward myself, I could not judge of the distance of those to leeward.

Prosecutor. Under the description you have given, was not the fleet scattered and dispersed?

A. I do not know what dispersed means; they were separate; part of them were separated.

Q. Did the Admiral make the signal for battle while the ships were as before described at eleven o'clock?

A. I cannot say at what time exactly, it was about eleven, or between eleven and twelve.

Q. Did he make the signal before or after the enemy fired?

A. After the enemy fired.

The Admiral. I beg leave to ask a question relative to the expressions, extended, scattered, or dispersed. At the time you are speaking of, was the three divisions of the British fleet sailing in the usual order that fleets sail when not in line of battle?

A. No, I think they were not.

Q. Were the several divisions in such a situation, as to form a line sooner than in the common way of sailing?

A. I think they were.

Prosecutor. You say the fleet was in such a situation, they could more readily form a line of battle, than the usual mode of sailing. If the signal for the line of battle had been made, instead of sending out ships of the Vice Admiral of the Blue's division to chase, which dispersed that part of the fleet, might not the British fleet have been formed into a line of battle, before the time the French attacked them?

The Admiral. The word dispersed is improperly brought in. I beg the witness may understand the word, dispersed, is used for him; I desire he may explain himself.

Witness. I made use of the word separated.

The Admiral. I admit of it, I meant to separate them from the Vice-Admiral.

Court. *Admiral Montagu.* We should go on faster if you would strictly adhere to the words as they come out of the witness's mouth; for, certainly, upon all occasions, we must be attentive to the words made use of by the witness; should the words dispersed, or extended, or scattered, appear upon my minutes, when the witness has not said it, it may be attended with the utmost consequence to the prisoner.

Court. He said the word separated.

The question read again. You say the fleet was in such a situation, &c. only instead of the word dispersed, separated is put in.

The Admiral. May I beg the question he has asked may be put down with the word the witness said, separated.

Prosecutor. I have a right to explain it. I say separated from me and from each other; they had different rates of sailing and started from different places of sailing, more and more separated from each other, as well as from me.

The Admiral. I beg pardon for interrupting, I am sure I was right.

Admiral Montagu. As I have it in my minutes, I am sure I always looked upon it as separated from the Vice-Admiral's division.

Judge Advocate. Shall I alter it?

Prosecutor. Let the single word separated stand.

The old question read again, with the word separated in it.

Q. Did the French fleet, by attacking us while we were not under a line of battle, but under the circumstances before described, rendered it impossible for our captains to engage ship to ship, or to bring on a general engagement?

A. Certainly.

Q. When Captain Digby run down, or proceeded along the French fleet, and engaged, did they appear to you to be formed into a line of battle?

A. They did, but a part of them were not very regular.

Q. Do you mean not regular in point of distance, though in a line with each other?

A. No, neither the one nor the other.

Q. Not very regular?

A. Part of them not very regular, one way nor the other.

The Admiral. Did not you say neither one nor the other?

A. The state of the question has been varied a little, therefore it varies my mode of giving the answer, I mean they were not regular in point of line or distance.

Prosecutor. Whilst you were proceeding along the French line and engaged, was you at any time interrupted in your fire, by the irregularity of our ships not being in a line, or by any other ship falling in your way?

A. No, I was not.

Q. Were any shot fired over you, from any of our own ships?

A. I believe not, but I was told—

Court objects to hearsay evidence; speak to your knowledge if you please.

A. I was only mentioning what I thought I was bound to do, to say the truth, it was during the action, and in the last fire, I was told it upon the quarter-deck; I don't know whether I ought to speak of it, as it is not my own knowledge, I was told.

Prosecutor. If Captain Digby is willing, he will explain his meaning by only saying I believe there was or was not.

The Admiral. He believes not; that is taken down as his evidence I suppose.

President.

President. Do you wish to explain yourself upon that head.

Captain Digby. I believe it is of very little consequence.

Admiral Montagu said the person who told Captain Digby would be the proper person to examine.

Captain Digby. I cannot even say who told me, it was during the action I was told, but I do not know by whom.

Q. When you passed the rear of the enemy's fleet, was you a-head or a-stern of the Victory?

A. A-head of the Victory.

Q. How long and how far did the Victory continue to stand, after she passed the sternmost of the enemy's line, before she wore, and stood towards them again?

A. I was so situated that I could not be a judge of the distance, and I was so much employed, that I did not see her at the time she wore or tacked.

Q. The first time you did observe the Victory had wore and was on the larboard tack, at what distance then does Captain Digby think she was from the French fleet?

A. I have said before that I was so situated, it was impossible for me to be a judge of the distance at all.

Q. Did you see her wear a second time, when she came on the starboard tack again?

A. I did see her about that time.

Q. Can you judge of her distance at that time, from the French fleet?

A. At that time the body of the English fleet was between me and the French fleet, and therefore I could not be a judge of the distance.

Q. Which way was your ship's head at that time?

A. I had wore once before and was just wearing at that time.

Q. Can you tell how many, if any ships were laying their heads to the southward, at the time the Admiral was wearing, to lay his head again to the southward?

A. The body of our fleet appeared to me at that time in a cluster, it is therefore impossible.

Q. Did the Victory appear to be in that cluster?

A. She did tho' not in the thickest part of them.

Q. Did you observe when the signal for battle was hauled down?

A. I did not.

Q. When did you first observe it was hauled down?

A. I was so extremely employed that I did not observe it myself, nor can I recollect when I was first told of it.

Q. Did you observe the Admiral unbend his main-top sail?

A. I did not.

Q. Did you take notice of its being unbent at any time?

A. I have mentioned before I was so much employed that I had not time to look myself, and did not hear of it till afterwards.

Q. You have said you took notice of the Admiral when he wore a second time, was that the time the British fleet was in a cluster as you have before described?

A. They appeared to me in a cluster from my position at that time.

Q. Did you observe the French fleet to break up their line of battle?

A. I was in that position I could not see. The British fleet stood between me and them.

Q. When did you first take notice of them after all firing ceased?

A. Not till they were got to leeward of our fleet and were standing to the south-ward.

Q. Did you take notice where the Vice Admiral of the Red, with his division was about the time when the Admiral wore a second time, and stood to the south-ward.

A. They were to wind-ward of the English fleet which prevented me from seeing them.

Q. From seeing them at all?

A. I could not distinguish them.

Q. When the Admiral wore a second time did you see the Vice Admiral of the Blue?

A. I cannot be accurate in point of time, I saw the Vice of the Blue not a great while before.

Q. What was her situation then with respect to the Victory?

A. As they both made a part of the fleet I could not judge at the distance, but the Vice Admiral of the Blue appeared to me to be to leeward.

Q. Did she appear at that time to be near to the Victory.

The Admiral. I have not heard him say he saw the victory wear yet, I shall not describe for him; I have not heard him say, there was a signal to wear.

A. I did see about the time of her wearing a second time.

Prosecutor. You saw her wear?

A. No Sir.

The Admiral. That is material to me; I will fix the question the time of wearing comes in, a quarter of an hour.

Prosecutor. Captain Digby is speaking of the formidable whom he said he understood by that wearing?

The Admiral. I beg the evidence may be read?

The Judge Advocate then read a great part of Captain Digby's evidence over again.

Now the Question stands.

Q. Did she appear at that time near to the Victory.

A. I have mentioned before I could not judge of what distance.

Q. As you are not able to speak to the time the Victory continued to stand beyond the French fleet, or ascertain the distance can you estimate the distance your own ship stood from the French fleet before you wore yourself?

A. I cannot, but I know I was obliged to stand a great way beyond the Victory.

Q. Was your ship to windward of the Victory within half an hour after she wore and lay her head to the southward the last time?

A. I was a great way to leeward.

Q. When did you first get to windward of the Victory?

A. Not till late in the evening.

Q. Did you pass a head or a-stern of the Admiral when you went to windward?

A. I do not recollect.

Q. Has he said what time?

A. I mentioned late in evening.

Q. How late in the evening?

A. I believe about seven o'clock.

Q. Did you observe what sail the Victory had set about that time?

A. I do not recollect.

Q. Did you tack or wear after you had passed his wake, and stand the same way he did?

Court. He does not say he passed his wake, he passed the Victory upon a different tack; He says he does not know whether he passed a head or a-stern, you have it, he passed the wake.

Q. Did you tack or wear after you passed to windward, and stand the same way he did?

A. I stood on farther to windward in order to to wear, but my foremast was so much wounded I was afraid to tack.

Q. After the Victory had wore to stand to the southward

Southward the last time you are speaking of, did she appear to you to keep her wind or to fail large.

A. The fleet appeared to me to be going upon the wind, but I did not take particular notice of the Victory.

Q. Did you at any time look at her and notice the sails she had set, or signals flying?

A. I did but cannot recollect the particular time, I saw particularly my own signal to get into my station, there were others but I cannot recollect them.

Q. But as to the sail set, what do you say?

A. I cannot speak with any certainty, but I think she had her fore-sail and top-sails.

Q. Do you recollect whether any stay sail was set or gib?

A. I do not indeed.

Q. Do you recollect what sail you carried yourself to keep way with her?

A. I have mentioned before I stood on to windward of the Victory, as I was afraid of my foremast, and after that I regulated my sail by the Vice Admiral of my own division.

Q. Was the Vice Admiral of your division a-stern of you after you wore and laid your head to the southward?

A. Not after I wore; I wore to get into my station, the signal was hauled down.

Q. What signal do you mean was hauled down?

A. The signal for the line of battle I believe had been hauled down some time before, and my signal likewise to get into my station.

Q. The signal for the line of battle and the other particular signal being hauled down, if I understand you right you then proceeded to take your station with respect to the Vice Admiral of the Blue?

A. Not for that reason only.

Q. Was not your station then a-stern of the Vice Admiral of the Blue.

A. It was.

Q. What distance do you esteem the Vice of the Blue from the Victory, at the time when you went to take your station a-stern of her?

A. I cannot speak accurately, as the distance varied, but I think it might be about a mile.

Q. What time do you mean, when you went to take your station a-stern of her?

A. About seven o'clock.

Q. Was that a-stern of the Victory, somewhat to windward of her wake, or how?

A. Both a-stern, and to windward of her wake.

Q. Did you observe any signals made in the night by the French Fleet?

A. I did not observe any myself, but some were observed from the ship.

The Admiral. I would save trouble, some were made by the French Fleet.

Q. Did you observe the French Fleet to bear away in the night?

A. No.

Q. What hour was the report made to you of those signals being made?

A. I think it was about eleven or twelve.

Q. How many of the French Fleet were in sight the next morning?

A. I saw but three.

Q. Were those three near the British Fleet, and to leeward?

A. They were to leeward, but not very near the rear of our fleet; I should think not very near, not nearer than four or five miles.

Q. Did they appear to you to be line of battle ships, or frigates?

A. Line of battle ships.

Q. Was any other part of the French Fleet seen from your mast-head?

A. There were not, that I know of, or heard of.

Q. Do you know of any signal being made by any ship in the fleet of seeing them?

A. I did not know that day, that they were seen.

Q. Did the Fleet, or any part of them, chase those three ships?

A. There were signals made for two or three ships, I cannot recollect which, to chase.

Q. Did they chase?

A. I believe some of them made sail.

Q. Were not the signals hauled in before they did make sail?

A. I did not see them all make sail, before the signal was hauled in.

Q. Can you inform me, Sir, what latitude you was in by your reckoning, at noon upon the 27th?

A. I believe it was about 48 deg. 22 min.

Q. Can you recollect the distance you was from Ushant?

A. I cannot exactly tell.

Q. To the best of your memory, by the reckoning?

A. Between thirty and forty leagues, but I recollect, we were out of our reckoning I thought so at the time, by comparing some other reckonings about that time.

Q. How was the wind, in the morning of the 28th?

A. I should be glad to refer to my log-book for the wind. West-north-west.

Q. What sort of weather was it?

A. It was more moderate than it had been.

The question was asked by the Prosecutor, How many ships of the line, the French Fleet consisted of?

The Admiral said, It is signed by me, and upon the table.

Q. How many ships of the line was the French Fleet composed of, at that time?

A. As far as I could judge from appearances, there were on the day of action, twenty-nine of the line.

Q. How many ships of the line did the British Fleet consist of?

A. I believe thirty; I wish it might be counted, because it varied sometimes.

President. Did you count the number of the French Line?

A. I did, and from their appearance, thought they were twenty-nine of the line; there were forty-one sail in all; twenty-nine considerably larger than the others, and some of the others much larger than the others of them.

Q. Whether he does not know or believe, there were two fifty-gun ships included in them twenty-nine?

The Court objected to his putting the words two fifty-gun ships in the witness's mouth.

Prosecutor. I wish to ask Captain Digby if he did not suppose two ships that are supposed to be fifty-gun ships, composed part of the twenty-nine he speaks of? No answer.

President. Do you know of what force the French Fleet of the line of battle was?

A. No.

Admiral Arburthnot. Has it come to your knowledge by any means, the names of the ships that composed the French Fleet?

Another Member of the Court. The first part of the charge, is being then in the presence of a like number of ships of the line.

The Admiral. I wish him to read the first part of the charge.

Judge Advocate Read the first part of the charge.

The Admiral. I beg not to take up any more of your time now.

Admiral Montagu. I have one question to ask; it is a question I must ask of every officer, especially those of the line of battle ships, that are old and experienced officers.

Can you acquaint the Court, of any instance within your knowledge, during the time the British Fleet were in action, that Admiral Keppel neglected to do his utmost to take, burn, sink, and destroy the enemy, having it in his power so to do; or negligently performed the duty imposed upon him?

A. I have always had the greatest esteem, and the greatest opinion of Admiral Keppel, as an officer; I have so still, but I have been giving evidence upon facts, and the answering that question would be judging upon them, which I have no right to do.

Admiral Montagu. Then I have one question more to ask, Sir, as it is one part of the charge; in the fourth article of the charge, he is there accused of running away from the French; did you that day see him run away from the French fleet, instead of advancing to renew the engagement, as in the preceding article is alledged, and not do his duty, as he might and ought to have done; it is this, The Admiral wore, and made sail directly from the enemy, and thus led the whole of the British Fleet away from them, which gave them an opportunity to rally unmolested, and to form again into a line of battle, and to stand after the British fleet; this was disgraceful to the British Flag, for it had the appearance of flight, and gave the French Admiral a pretence to claim the victory, and to publish to the world, that the British fleet ran away, and that he pursued it with the fleet of France, and offered it battle?

Sir Hugh Palliser. That the French say—

Admiral Montagu. Then it is necessary we should inquire into it, to get the better of what the French have said.

Judge Advocate. The question is, did you see him that day run away from the French fleet?

A. No.

[The Court adjourned to 10 o'clock on Wednesday.]

The Sixth Day's Proceedings, Jan. 13th, 1779.

Captain DIGBY farther examined.

I said yesterday, I did not know the distance from Ulhant, I was not certain, it had better be left till my master comes?

Court. You can only speak to your own knowledge.

Admiral Montagu. I will ask you a few questions relative to the charge in the second article, against Admiral Keppel, that, after the van and center divisions of the British fleet passed the rear of the enemy, they did not immediately tack and double upon the enemy with those two divisions, and continue the battle, that he did not collect his ships together at that time, or keep so near the enemy as to be in readiness to renew the battle, but stood away from the enemy.

Q. Had not the van and center of the English fleet been engaged with the French as they passed?

A. They had, a great part of them.

Q. Was the ship you commanded engaged?

A. Yes.

Q. What was the condition of the ship you commanded, after you left off engaging?

A. Our main top-sail was cut to pieces, our running rigging very much cut, so that we were not able to wear for some time, our fore-mast was

wounded in several places, particularly in one that was cut full half through, several of the other masts and yards were wounded, the main-yard and mast particularly.

Q. In the situation you have described your ship to be, was it such as you could renew the attack if the Admiral had tacked immediately after the enemy?

A. I don't think my ship was in a situation to seek an attack for a good while afterwards.

Q. How long was it after you engaged before your ship was in a proper condition to renew the fight, supposing the Admiral had judged it proper so to do?

A. My fore-mast was so much cut that I was afraid of its going over the side, but if any ship had come near me, I should have been in a condition to fight.

Admiral Montagu. How long was it after you was engaged before your ship was in a proper condition to renew the fight, supposing the Admiral had judged proper so to have done, don't speak to half an hour or a quarter, how near was it to night or evening, or how late in the afternoon?

A. My reason for hesitating about that question, was I think there is a vast deal of difference between being in a condition to support an attack, if the enemy had made it, and a condition to seek one if I was to leeward. I was a considerable way to leeward; I was not in a condition till a great while afterwards.

Q. How near sun-set; I don't care whether you were to windward, leeward or a-stern?

A. It was near seven o'clock before I was able to attack, the lee leech of my main-sail, was so cut that I could not set it upon the other tack, before that time.

Q. Was not you to have led the van, upon the tack the Admiral was at, at seven o'clock?

A. No Sir.

Q. Then I will put it after the engagement was over, and the Admiral had laid his head towards the enemy upon that tack, was not you to have led?

A. No, Sir.

Q. Did you tack?

A. I did. I thought it was necessary to tack, it was necessary upon account of my being so far to leeward.

Admiral Montagu. The Admiral is charged with not pursuing the enemy after the first attack, I want to know whether your ship was in a condition to renew the attack, supposing the Admiral had thought proper to have done it?

A. I was not in a condition till a great while afterwards.

Judge Advocate. Now the question is did you tack?

A. I did.

Cross Examination.

The Admiral. I would ask Captain Digby what force he discovered in the afternoon of the 23d, the French fleet to be composed of, and how far they were from him, while the day permitted him to count them, I will explain my meaning, I mean one of battle ships?

A. I could not count them, the weather was so thick.

Q. Then to follow that, I will ask if you can inform the Court, how far was the Vice Admiral of the Red and his division from you at this period, the latest period of the day?

A. As the fleet had been endeavouring to get into a line of battle, and were nearly so, and as I was though not got into my station, nearly so, in point of distance from the Vice Admiral of the Blue, not far from him, nearly so; which will determine the distance better than I can:

Q. Can

Q. Can you inform the Court, how far the Vice Admiral of the Red and his division was from you, at this late period of the day?

No answer.

Q. Whether he knew the Vice of the Red and his division were in their stations, if he was close to his station in the line of battle?

A. I am not sure that I saw him at that time, as the weather was very thick and hazy; I rather think he was.

The Admiral. I must ask Captain Digby a question?

Court. What day was this?

The Admiral. I shall put a great many days together and have done.

Q. I will beg to ask Captain Digby a question, to which I hope for a direct answer if he can give me one; he is an officer whose rank in the service entitles him to large commands, and he has had such commands. Would he with a squadron of ships of the line of battle under his command in the situation the French have been described by him to be, during the 24th, 25th, and 26th, and 27th, relative to the weather, wind and sea, and seeing an enemy to leeward of equal force, have hesitated one moment to lead his squadron to battle with them, upon account of such weather, wind, and sea, as before described?

A. I believe I should have attacked them.

Q. I asked whether you would have hesitated one moment?

A. I will give pretty near the same answer, I think I should not have hesitated.

Q. I would ask Captain Digby whether he can inform the Court of the relative situation of the English and French fleets at day light, upon the 27th of July?

A. As well as I recollect, we were both on the larboard tack, the French fleet about six, seven, or eight miles to windward of me.

Q. What was the situation of the Vice Admiral of the Blue and his division, with respect to the Victory at that time?

A. They appeared to me upon the Victory's lee quarter; they appeared to me to be to leeward of the Victory.

Court. At what time?

A. At day-light in the morning, I rather believe it was the lee-bow.

Q. You are not sure?

A. I am not sure, I took notice at that period.

Q. At what distance do you think they were from the Victory?

A. At that period I really cannot recollect with exactness, I was up several times in the night.

Q. Can you recollect what sail they were under?

A. I cannot indeed.

Q. How was Captain Digby in the Ramillies himself situated, relative to the Vice Admiral of the Blue, and the Victory?

A. I have said I could not recollect exactly at that period of time, I remember to have ordered my officer, to keep upon the Vice of the Blue's weather-beam; and when I did take notice he had done so, he had kept still farther.

Q. I would ask Captain Digby, when he did take notice what hour of the day it was, at the time he did take notice, and where he was then with respect to the Victory?

A. Upon the signal being made for the ships to chase in the morning to windward, I set my stay sails, and the period that strikes me strongest was just after we tacked between eight and nine, I don't recollect exactly I believe I was then upon the Victory's weather quarter.

Q. Was there any greater indication at the time the signal was made for the ships to chase to wind-

ward, of the French intending to fight than upon the preceding day?

A. I did not think there was.

Q. Had the Admiral formed a line upon that morning, must not he have bore down to have joined the ships to leeward, or have shortened sail and called back the Red division, and thereby have increased the distance from the French fleet?

A. Certainly they must have bore down and many of the other ships to windward also, and would also in course have increased your distance.

Q. Can you inform the Court the exact time the French fleet tacked from the larboard tack to get on the starboard tack;

A. I cannot from my memory inform the Court of the exact time, but I believe it was about three quarters of an hour, or an hour before we tacked.

Q. After the English fleet were about upon their starboard tack was there any sort of change in the wind?

A. It favoured us; I have said I believe the English fleet tacked between eight and nine, the French fleet about ten, it is so in the log, but I don't recollect accurately.

Judge Advocate. Would you have those words put in the minutes?

The Admiral. They are of no consequence.

Q. When the wind favoured us a little, did the English fleet or did you lay up for a part of the French fleet?

A. I did.

Q. Upon what tack was the French fleet when the engagement began?

A. Upon the larboard tack.

Q. Do you know how they got upon that tack and when?

A. It was very thick, and I did not know.

Q. Had you lost sight of them for any time?

A. I think we had.

Q. When you discovered them again after you lost sight of them, were they then got upon the larboard tack?

A. Yes they were.

Q. Do you recollect how long it was from your discovering them again upon the larboard tack before the firing began?

A. As well as I recollect it was upon my officer acquainting me there were guns firing a head.

The Admiral. I don't know whether Captain Digby, quite understood me?

The question read again.

A. I believe I did not discover them myself upon that tack till after they told me there was firing.

Court. What hour was that?

A. I believe it was about eleven o'clock, I fancy I laid breakfast time before; I was in my cabin.

Q. Were the greatest part of the ships of the British fleet when they came to battle, in a situation to speedily support each other?

A. I could be no judge of the Vice Admiral of the Red's division, I know that in the part I was, I was supported by the Admiral and his seconds; accidentally I was a-head of the Admiral.

Q. Can fleets at any time being upon different tacks fight ship to ship, with or without being in a regular line?

A. I think not.

Q. You have described yourself to have been near the Admiral, supported by the Victory, when you in the Ramillies, and the English Admiral were engaged with the French Admiral: was that part of the French fleet in a regular line as you and the Victory passed them?

A. They were not in a regular line.

Q. Was any of them right to leeward of the others?

A. There were some of them a good deal to leeward, whether directly to leeward I cannot say.

Q. Was

Q. Was there to your observation more British, or more French ships engaged, what I mean by engaging is engaging like men. Not at a distance?

A. My attention was so much taken up to my own ship, that I really could observe only those that were just about me.

Q. Now Sir, what hour in the afternoon of the 27th of July did you first see the Victory on the starboard tack standing to the Southward.

A. As I am desired to be accurate in time, I must say I had very little idea of, how time passed that afternoon from the time of the action beginning.

Q. Did you ever observe the Victory upon the larboard tack at all?

A. I either observed her upon the larboard tack or they told me, for I wore in consequence of her being upon the larboard tack.

Q. For fear there should be any mistake about the Victory wearing, did you see her wear from the larboard to the starboard tack?

A. No I did not.

The Admiral. Time is the most material thing to me, to ascertain, throughout the course of my duty to my king and country on that day, and therefore bringing the matters before the Court, without bringing them to time, is not giving them the information I should wish to call for; and Captain Digby not having been able to be sure of his time, almost makes one or two questions I intended to ask unnecessary; but as he has mentioned in a former part of his evidence, that when he observed, the Victory upon the starboard tack, he saw a cluster of ships about her, who or what they were he does not describe, more than that he saw the Vice Admiral of the Blue; he did not say the Victory was in the midst of that cluster, but he saw some ships about the Victory, that looked like a cluster, that were near to him; can he say at what hour it was?

A. No, I cannot say the hour.

The Admiral. Then as I said before, as to time he cannot answer to time, it is unnecessary to take up the time of the Court.

Judge Advocate. Give your answer again.

A. It was not long after the Vice of the Blue had done engaging.

Q. Did you say when the Vice Admiral of the Blue had done engaging?

A. I was told he had done, I did not look for a moment; I was so busy for the whole day; I just took my glass and put it down again.

Q. At what time was you told so?

A. I really cannot say in point of time.

Q. When you were to leeward of the Victory upon the starboard tack, in any part of the afternoon from three to six; were there any other ships of the British fleet to leeward near you?

A. There was.

Q. Can you say how many?

A. There were at one time four if not five.

Q. Does he recollect the names of those ships?

A. I think one was the Robuste; I think the Sandwich was another; I really don't recollect with certainty the others.

Q. I would ask Captain Digby, whether at any time between three and six, he ever noticed the Victory appearing to lead down from the wind, toward him and those ships bearing from the wind, at any time between three and six o'clock, to those ships?

A. I have said before, that I was so very much employed, that I looked but very seldom, but think she did lead down.

Q. Do you recollect at what part of the time between three and six, the ships that you have de-

scribed to be near you; one, two, or all of them, left you, and which they were?

A. Upon my word I cannot, but they left me one after another.

Q. Can you say at what hour of the evening of the 27th, you saw the Victory without the signal for the line of battle flying?

A. It was just as I was wearing after I stood into the fleet, that my officer came and told me the signals were down; whether I looked myself I cannot say.

Court. What time?

A. About seven, I think; whether I said seven or eight I am not sure; I believe I have declared it in my former evidence between seven and eight, I think.

Q. Was it near dark?

A. Upon my word I cannot tell, it is impossible at this distance to recollect, one is so much employed; I wish I could; I can so far recollect, I am very sure it was not quite dark.

Q. How soon after you wore, was you astern of the Vice of the Blue; in that situation you described to be a proper one?

A. Very soon after.

Q. Did you preserve that station and keep sight of the Vice Admiral of the Blue's lights all night?

A. Nearly.

Q. Was you near the Formidable at daylight?

A. I was.

Q. At what distance and how did the Victory bear from the Ramillies at daylight?

A. She was upon the lee-bow, the distance strikes one so differently at different times, it is difficult to ascertain, as near as I can ascertain, she was between one and two miles.

Q. Was it to the westward, was it northward, or was it southerly?

A. I must turn to my notes, it was W. N. W.

Q. How was the weather?

A. It was more moderate than the day before, but it certainly did blow fresh.

Q. Was there a large swell?

A. There was a good deal of swell.

Q. Was this wind favourable to carry ships to the Port of Brest?

A. It was.

Q. Was your ship in a condition to chace as a man of war should chace, without danger of entangling herself upon a lee shore upon an enemy's coast?

A. She was not.

Q. After I had brought the fleet too, with the ships heads to the northward, upon the morning of the 28th, do you recollect I made any signal?

A. I don't recollect the signal nor the time; I recollect there were ships made signals, that they wanted to set their rigging up, but I cannot say when.

Q. Was you one of those ships?

A. I did make that signal, after seeing many others had made it.

Admiral Arbuthnot. I should be glad Captain Digby would give his reasons to the Court, why, after the 24th (the second day), he believed the French meant to avoid coming to battle?

Judge Advocate. Why did you think the French fleet wished to avoid coming to action with the English fleet after the first and second day?

A. Because they might have come to action if they had chose it.

President. Whether Captain Digby does not say, there were several of the English fleet to leeward of the Admiral; had the Admiral formed a line that morning, would it have been in the power

power of any part of the English fleet, to have brought on an Engagement that day, meaning the 27th?

A. I don't think they could.

Prosecutor. If the signal had been made for the line of battle, in forming of it, would it have been necessary for the Admiral to have bore down into the wake of the Vice of the Red division, and would not the Vice of the Red division, in that case, have come into action in like manner as they did, excluding only the Duke, that was a long way to leeward.

A. A line of battle in my opinion, always retards, and I imagine, had the signal been made, the Vice of the Red division must have shortened sail.

Q. If the French fleet had not intended to bring on the action, would they have tacked the second time and edged down and attacked our fleet in the situation they were in?

A. I understood from your question, as if I had said, they did not intend to come to action; I only meant to say early in the morning. It did not appear to me, they had any particular design of coming to action; I did not say at that time; I meant in the morning at day-light; you will recollect.

[The notes shewn to Captain Digby, and asked by the Judge Advocate, if they contained his meaning? He said, yes.]

Court. You may alter it as you please.

Captain Digby. I cannot alter the sentence, it is impossible; but I can explain every word of it; it is very much my meaning; I don't know that I can mend it.

Judge Advocate to the Court. Will you please to ask Captain Digby, whether those words shall stand as his answer to the question?

Captain Digby. I have no objection.

Q. If the French fleet had not intended to come to action, might not they have avoided it that day; or could they not have avoided it?

A. They probably might have avoided it some time, but as I was in the rear of the fleet, I cannot possibly say how long.

Q. If his ship was not one of the Vice of the Blue's division?

A. She was.

Q. As Captain Digby has described his situation in the action to be mixed with the center division, I will ask Captain Digby if he knows of any other ships of the Vice-Admiral of the Blue's division, being in the same situation in consequence of the signal being made for those other ships to chase?

A. I do not know of any others in the same situation, because I do not know any that were a-head of the Admiral.

Q. Captain Digby has described the situation of the fleet to be such, that the ships were so situated as to support each other. Captain Digby, in answer to one of the Admiral's questions, said, the greatest part of the ships were in that situation.

The Admiral. That was my question.

The court desired it might be read.

Prosecutor. If those ships of the Vice of the Blue's division, who chased by signal, or part of them, were in a situation to support each other?

No answer.

Q. You said those ships of the Vice of the Blue's division, who chased by signal, or part of them, together with your ship, did engage in the center division; where was the Vice of the Blue, and the rest of his ships? Were they in a situation to support each other equal to the rest of the fleet?

A. I did not chase, and as I was a-head of the

Admiral, and as I believe the chasing ships engaged a-stern of him, I do not know their situation, but that they were a good way to windward just before I engaged.

Q. Captain Digby has not said what must have been the situation of the rest of the division, whether they were upon an equal footing to support each other, or with the rest of the fleet?

A. I have not said, where the chasing ships engaged, but if they all were separated from their division, they certainly could not support each other.

Q. As you have observed, part of the French fleet were not in a regular line, Did you observe one ship in particular being to leeward of their line and shut out of it by our ships closing to the windward, when one of our ships, supposed to be the *Courageux*, passed between her and the French line, do you remember any other ship of the French line being so far out of their line?

A. There was one ship to leeward of the rest, I cannot judge of the distances of the others.

Q. Do you think the irregularity you observed in their line, was more than what might naturally have been expected, from having been engaged with the ships that passed by you?

A. There was an irregularity in their line, but what it proceeded from I do not know.

Q. I will ask Captain Digby a question: I apprize him of the time it relates to; first, after the Admiral of his own division, and the Vice Admiral of the Red division passed the rear of the enemy. The question I am going to put, has relation to the immediate time after that. Whether or no the Admiral, with his own division, and the division of the Vice-Admiral of the Red, and such ships of the Vice-Admirals of the Blue's division as had joined him, did tack and double upon the enemy, and continue to engage them?

A. The Vice of the Red, with his division, passed to windward of me soon after I came out of the action, but I believe the action was not renewed upon that tack, meaning just at the time.

The Admiral. I have no objection to these questions of the accuser, but I apprehend he is now cross examining upon my questions; this question of his, I apprehended he should have put while he examined the witness, with respect to the accusation; not that I have any objection, but I think it is the usual method.

Q. Did the Admiral, with his division, and the other ships, do so, and renew the engagement?

A. I believe not.

Q. Did the Admiral, with the whole of the ships, keep so near to the enemy, as to be ready immediately to renew the engagement, when the Vice of the Blue came out of it, or to support him while he continued engaged, with the few ships that were with him?

A. I have already described my situation; to be such about that time; the English fleet being between me and the French fleet, that it is impossible for me to answer how they were situated.

Q. I would only ask Captain Digby, if he meant to say, he does not know that the Admiral did so, or if he knows that he did do so? Do you mean to say you know or do not know?

Admiral Montagu. I understand Captain Digby means to say what he has said, therefore if another question is put, it will naturally lead to that. Asking a man whether he meant to say, that after he has said it is wrong, it is not right; after it is wrote down, there it must stand. Now what is your next question?

Prosecutor. Do you know that he did do so?

A. Do what Sir?

Q. Keep at that distance so as to be at hand to renew the engagement, when the Vice Admiral

came out of it, or support him while he remained engaged with the French fleet?

A. I have declared that I did not.

The Admiral. I should be glad to know, whether the Vice Admiral calls this a cross examination, upon what the witness has given in evidence upon my questions?

Prosecutor. Yes, I do.

The Admiral. Certainly it is taking up the time of the Court; it is calling upon me again to examine the witness, and in doing that, I shall be obliged to take up more of the time of the Court than I could wish.

Prosecutor. My question relates to what was excepted to by Admiral Keppel, relative to his own situation. I beg what has been said may be taken down; the question I have put arises from those questions put by Admiral Keppel to the witness, relative to the situation he was in after the engagement.

The Court said they must debate upon it.

A Member of the Court. For my satisfaction, I beg one question may be answered first: If the French had not intended to come to action upon that day, the 27th? look back, and read the answer to that.

Judge Advocate reads, If the French fleet had not intended to come to action upon that day, could they not have avoided it? the answer is, Probably they might have avoided it sometime, but as I was in the rear of the fleet, I cannot possibly say how long.

Member of the Court. Then I wish to ask you a question now.

Q. Was it a favourable change of wind on the 27th, or the inclination of the enemy to come to action, that brought on the action?

A. I believe the favourable change of wind helped; as I was in the rear, as I have said before, I cannot determine the situation of the van with the enemy.

The Court withdrew and when they returned, the following resolution was read by the Judge Advocate.

Judge Advocate. Is it your pleasure I should read the resolution you have come to, in consequence of your debate?

President. If you please.

Judge Advocate. It is agreed, that neither the Prosecutor or Prisoner shall cross-examine his own witness, after either has put such witness before the Court into possession of the other: keeping, however, in reserve, that either party, after all the witnesses have been gone through upon both sides, may call in those witnesses he may then think fit, to any point wanting to be explained.

Court, to the Admiral, Would you ask him any other question?

The Admiral. I understand I cannot ask, I have one very material question: I had several questions to ask; but I must have done in obedience to your resolution: I am very well satisfied with the resolution of the Court, I suppose when I come upon my defence, I may call all those witnesses I have examined, if I think proper: I understand this resolution perfectly, I shall not break in upon it.

Admiral Montagu. If it is broke in upon, we never shall have done till the day of resurrection.

The Honourable Captain WINDSOR,
Captain of the Fox sworn.

Prosecutor. I beg Captain Windsor may be asked, whether he received any orders from the Admiral, in the evening of the 27th of July.

A. Yes, I did Sir.

Q. At what hour, Sir, at what time?

A. A little before five.

Q. Please to inform the Court what those orders were?

A. The orders I received, were from Admiral Keppel, to stand towards the Formidable, with Admiral Keppel's compliments to Sir Hugh Palliser, and to acquaint him that he only waited for Sir Hugh Palliser and his division bearing down into his wake, for him to renew the attack.

Q. Did you commit those orders when you received them, into writing?

A. No, Sir.

Q. From whom did you receive those orders?

A. From Admiral Keppel.

Q. Did you go on board to receive them, or was it by hale?

A. I did not go on board; the message I received was under the Victory's stern.

Q. And was it from the Admiral himself?

A. Yes, Sir.

Q. Have you had any conversation since with any person to assist you in remembering and recollecting the precise words of the order that you received, as you did not commit it to writing?

A. No.

Q. At what time did you deliver your message?

A. I suppose nearly about half an hour past five from the time of receiving of the message.

Q. Who received the message from you?

A. I repeated the message twice to you.

Q. In delivering the message, did you actually use those words, That the Admiral said, he only waited for me and my division, in order to renew the attack, or only inform me, the Admiral wanted the ships of my division into his wake?

Let him recollect himself, I don't mean to hurry him.

A. I have already repeated to the Court, the message, word for word, as I delivered it to you.

Q. What answer, did I make you, Sir?

A. That you understood me very well.

Q. Did not I say, I desire you will acquaint the Admiral that I had repeated his signals for the ships to bear down?

A. I did not hear any message delivered from you.

Q. Were not a number of ships pendants then flying on board the Formidable?

A. To the best of my recollection, the Formidable threw out several pendants after I had delivered the message.

Q. What sail had the Victory set, when you received the message?

A. I do not recollect.

Q. Can you recollect what signals she had flying?

A. I cannot charge my memory.

Q. Do you remember your ship's company giving three cheers to the Formidable?

A. Yes, I do, in answer to three, your ship's company gave the Fox.

Q. Are you sure it was the Formidable or Fox that cheer'd first?

A. I am sure the Formidable.

Q. What distance was you from the Formidable, when you spoke to her?

A. So very close as to have our sails becalmed.

Prosecutor. I will not trouble Captain Windsor, with any more questions.

President. Were any signals thrown out from the Admiral, for the Vice Admiral of the Blue and his division, to bear down into the Admiral's wake, before you were sent with that message, and at what time?

A. The

A. The distance of time is such, I cannot recollect.

Q. Was there any thrown out?

A. I cannot recollect.

Admiral Montagu. I must ask one question, which I shall never omit, while I have a witness before me: Did you see Admiral Keppel with the British fleet run away from the French upon the day of action, or the day afterwards?

A. No.

Admiral Buckle Desired to be excused from attending as one of the Court Martial, any longer, as his health would not permit him, without great danger.

The Court after having the Clause in the act read, relative to the Court Martial always continuing on board a ship, or place, where they try; and the section containing the number necessary to remain sitting as a Court,

The President then asked the rest of the Members separately, whether it was their pleasure to excuse Admiral Buckle? To which they all agreed.

[The Court then adjourned till 10 the next day]

Seventh Day's Proceedings, January 14, 1779.

Captain ALEXANDER HOOD, sworn.

[The Resolution of the Court to dispense with the farther attendance of Admiral Buckle, as one of the Court-Martial, read, and the remaining Members called over, who took their places accordingly.]

The Admiral. Sir Thomas Pye, I know it is expected by some, that, after the history which the Court has received of the alterations made in Captain Hood's log-book, by his order, since my trial was expected, I should object to his evidence; but desirous as I am that every one should give testimony, who knows any thing of the operations of the fleet, under my command, I rather wish to hear Captain Hood examined.

Prosecutor. I desire Captain Hood to give an account what those alterations were in his log-book, for the information of the Court.

Captain Hood. Mr. President, before I proceed to give evidence I beg the indulgence of the Court for leave to explain the nature, the sum and the substance of the alterations in the log-book of the *Robuste*; because, I flatter myself not only this respectable Court, but the Public at large will be well satisfied with the innocence of it; and I trust that they cannot be construed in any shape to affect one side or the other. For my own part, I never considered a ship's log-book to be material evidence, much more did I ever expect, that any words, that I should put into my log-book, would be considered as a charge. God forbid, such a thing should be conceived of the log-book.—The bounds, the courses, the distances, in the *Robuste's* log-book stand unaltered; the corrections in it respect the narrative part only, and when I found that the ship's log-book was likely to be produced to a Court, perhaps upon myself; upon that account, not knowing but that I should appear here a prisoner instead of an evidence, I judged it proper to revise and correct it, for the credit of the ship and for the sake of all her officers.—This was not done, Sir, in private, but known to every officer in the ship, that by setting forth a fair and faithful representation of the transactions upon the 27th of July.—Sir, I stand here an attacked man: from the 11th of August last to the present hour; my honour has been wounded; I have in papers of that date found, I was put under an arrest for disobedience of orders; in other papers I was

broke; since which letters have been circulated to the greatest characters in this kingdom, charging the Rear Division with the loss of that day. The words are: "The information I received from the first men in the kingdom were, that had the Rear Division done half as well as the Van and Center, the victory would have been obtained." Since which there have been anonymous publications, which I very much despise; and I was alarmed greatly when, in a public assembly, the whole of that division seemed to be aimed at; it became incumbent upon me, I thought, to revise my log-book, that it might be a log-book for the benefit of my officers, whenever I came to be put upon my trial. If I have erred, I have erred innocently.—The Master of the *Robuste*, Sir, has refused here to take the oath that was administered; I applaud him for it; it was acting like an honest man, with a conscientious regard to truth; whenever he gives his evidence here (if he is admitted to give it) I am persuaded it will have the full weight; he has, as I am informed, (but I only take it from information) offered at the same time to swear to the truth of the log-book.—The Court will give me leave to make one observation upon the credibility of log books, and which, in the opinion of the law, is best, that man who swears that the log book has not been altered, from such a period to such a period, or the man that acknowledges an alteration and swears to the truth of the log-book; I am no Lawyer, but common sense tells me, the one is full as strong evidence, if it is to be admitted, as the other.—But I don't think log-books, God knows, kept in the manner that they are kept, that they are to be taken as evidence; they serve to assist the memory; and I shall beg leave to call the master of the *Robuste* to answer such questions as the Court shall think proper to put to him, if they should judge it necessary, in order to clear up, and to elucidate this business; and I trust, that, when the whole is investigated, I shall not be considered, shall not be thought to have done any thing to the prejudice of that Honorable Admiral, or have acted in any degree, or in the smallest degree, a dishonorable part.—I beg also, Lieutenants Pitt and Lumley, if the Court approve of it, may be called to produce their logs or journals, taken from the original log-book, as originally stating of the matter; the Court then will be in full possession of the alterations, and to their judgment and the judgment of the Public, without doors, I submit my honor.—Sir, I must beg leave to say one thing more, which strikes me very forcibly as an officer in the King's service. If a Captain of one of the King's ships has not a power of correcting and revising his log-book, I really think he is in a most deplorable situation; I think, as far as I understand, the instructions are, that I am authorised to do it; that I am called upon to do it; the Master is also called upon to do it; by his instructions the Court must know it well, that he is to correct his days works, and correct his log-book; why, it is done perpetually; is it criminality? there is no law against it; there can be no criminality in the thing unless the words were contained in an affidavit, and altered after being sworn to.—Sir, I declare, if I have not that power of revising and correcting the log-book, whenever it shall be found erroneous, my honor, my reputation, and my existence in the service, depends upon it, and if that is taken from me, I declare here, I never will set my foot on board a King's ship again.

Judge Advocate. Do the Court wish I should put it down?

The Admiral. I ask, if the short-hand writers have been able to take it down so as to enter it properly?

Captain Hood. It is what I wish to do, because I have really felt a great deal of uneasiness.

It was taken down from the short hand notes, and while reading over again the witness said, these words I wish to be inserted; I have heard of letters being seen by persons of high rank and character.

President. Let the log-books be called for; (call Lieutenants Pitt and Lumley) they should be laid upon the table and be sworn to.

Captain Hood. I fancy they are copies of the log-book.

Mr. Lumley. Mine is an exact copy, taken from the original log-book, before any alteration was made, except some trifling things of my own, which have been put in a parenthesis.

Court. When was it put in?

A. At the time I wrote it.

Q. When was it wrote?

A. In the course of the last cruize.

Q. In what month was that?

A. In October.

Court to Mr. Pitt and Lumley. Bring your log-books when you are called in evidence.

Admiral Montagu to Captain Hood. Inform the Court what those alterations were in the log-book?

President. Had not you better have them before you?

Captain Hood. I should be glad to have them both before me; they are precisely the alterations; I cannot mistake a word if they are both before the Court; if they are laid before me I can be precise as to the words, as to the substance I can tell them.

Court. Relate to the Court the alterations in answer to Sir Hugh Palliser's question?

A. The first alteration is relative to sending out the ships to chase in the morning; my original log-book made the Vice Admiral to send out the ships instead of the Admiral, that was the first, and that was corrected by saying, The Admiral made the signal for us and several other ships to chase to windward; that is the first alteration.—The second part of it speaks more fully. I apprehend, the signal made in the afternoon for the ships to bear down speaks more fully.

Court. The Admiral's signal?

A. Yes.

Court. Do you mean the Vice Admiral of the Blue?

A. No, Sir, the Admiral's signal for the ships to bear down in the afternoon.

Q. What ships to bear down?

A. I apprehend, when the signal for the line was out, it was for every ship to bear down; I think it includes the whole, according to my idea.

The other alteration is, seeing the three French ships in the morning, which were omitted in the original log-book; God knows, how it was omitted; I am sure, I saw them, and every man in the ship must.

Q. In the morning of the 28th?

A. In the morning of the 28th; the log-book, that is before the Court, speaks of the Robuste bearing down in the evening to take her station; and it goes on to say, she continued in her station with as much exactness as a disabled ship could do, the Admiral carrying much sail; that is the alteration.

President. That, which you mentioned last, is part of the other amendment?

A. That is the addition, the alteration; the Master was present at the time that it was made; if there should be any other variation, I hope, the Court will indulge me in it; for, I really mean to tell the truth; I have no design, I have not, I declare upon my oath and my honor, I shall impart to this Court every thing that I can respecting the whole of that business;

Admiral Montagu. What hour was this that the signal was made to bear down into the Admiral's wake, as you were a much disabled ship, and the Admiral making much sail; what hour in the afternoon?

A. It was in the night, Sir, my log-book says this; the Robuste bore down into her station, and took her station in the evening.

Q. I want to know what hour?

A. It was night.

Q. You were then a disabled ship?

A. I was, Sir, I had not bent any one sail, but the main top-sail.

The Admiral. As the matter of the log-book is a separate thing, I beg I may ask a question before he goes into the charge, if the Court has no objection to it; I will ask Captain Hood, whether the entries in the Robuste's log-book of the 27th and 28th of July, are as they stood originally?

A. Upon my word, Sir, I do not know.

Prosecutor. I beg, Captain Hood may be asked, what situation the French fleet were in upon the night of the 23d at dark, with respect to the British fleet, and upon which tack they were standing?

A. The French fleet were to leeward of the British fleet at night of the 23d, standing upon the starboard tack.

Q. How was the British fleet then lying?

A. The British fleet was then lying to, on the larboard tack.

Prosecutor. What time of day. Was it just at dusk?

A. I do not exactly know the time the Admiral made the signal to bring to; there were many signals made that day; if the Court pleases to know what they were, I believe, I can recollect them, upon memory; but that is an answer to the question without going farther.

Q. I am speaking to just at dark night.

A. At dark night the British fleet was laying to upon the larboard tack,

Q. How was the wind then?

A. About W. N. W. I judge.

Q. Then the French being upon the starboard tack and to leeward of the British fleet, and the wind W. N. W. had they not the port of Brest under their lee?

A. They certainly had, Sir.

Q. Did the British fleet continue to lye too all that night?

A. I think they did.

Q. If the French Admiral had intended to avoid coming to an engagement, would he not have continued to stand upon that tack all that night towards Brest?

A. If the French Admiral's orders authorized him to go into port he certainly had it in his power.

Q. Was, or was not the French fleet the next day to the windward of the British fleet, and had thereby placed the British fleet between them and the port of Brest?

A. The French fleet was certainly to windward of the English fleet in the morning, and consequently must place the English fleet between the French fleet and the port of Brest.

Q. From these motions of the French Admiral did you apprehend that he meant to avoid an engagement, or that he meant to bring one on, when the wind and weather might make it proper for him so to do?

A. From the motions of the French fleet, they indicated to my mind their intentions of keeping the sea.

The question read again to him, again he answered—Of course he did not mean to avoid, and from

from the subsequent matter, I judge, he meant to engage the British fleet.

Q. I desire Captain Hood to endeavour to recollect the wind and weather and sea, during the 24th, 25th, and 26th.—You will recollect a little and then I will put the question to you; you may refresh your memory.

A. I may be allowed to look at the log.

Q. I would ask Captain Hood, if, during those days, he thinks it would not have been disadvantageous to the French fleet to have attacked the British fleet, considering the wind and weather and sea, during those days, as in that case they must have fought their lee guns?

The Admiral. That is begging the question; though I have no objection to Captain Hood's answering.

Captain Hood. The wind and weather, during those days was squally, sometimes with rain, as far as I recollect, the sea rather rough; it would have been disadvantageous for any fleets to have engaged those days, more particularly the French fleet, because, they must have fought their lee guns, being to windward, which, I think, could not have been done with any advantage.

Q. In the morning of the 27th, Sir, was not the British fleet scattered, by which I mean, several ships of each division being in various bearings and distances from their respective Admiral?

A. I was not upon the deck till after the signals were made for the Robuste, and I think five other ships of the Vice Admiral of the Blue's division to chase to windward, consequently, I cannot speak to the state of the fleet before that period.

Q. Did not that signal then cause that part of the fleet to be more dispersed and separated than they were before?

A. I think, those six ships, the Robuste and five others: I have said, I think six ships chasing to windward from, as far as I can recollect, between five and six o'clock in the morning till ten, I believe, carrying during that space of time as much sail as it was their duty to do, the signal having been thrown out for them to chase, must of course increase the distance from the center of the fleet, and thereby, may be said, to be more scattered or dispersed.

Q. Did not that signal leave the Vice Admiral of the Blue with four ships only?

A. The Vice Admiral of the Blue's division consisted of ten sail; I have given an account of six of them having been ordered to chase to windward, by signal, consequently there could remain but four with the Vice Admiral.

Q. What time did the British fleet tack all together, by signal?

A. I wish in the course of the evidence that I shall give, this day not to be confined precisely to time, it being very much out of my power so to do.—As near as I can recollect the Admiral made the signal for the fleet to tack together about ten o'clock.

Q. Was there any signal for a line of battle made that day, before the engagement began?

A. None, that I saw.

The Admiral. That is all admitted.

Prosecutor. Did not the Victory begin to engage with the French Admiral in the center of their line?

There is one question I meant to put before that, ask Captain Hood at what time he first saw the French fleet to be in a line of battle that morning?

A. To the best of my recollection, they began to form, and were forming very early in the morning.

Q. What time did you first see the French fleet in a line of battle?

A. They were formed, and completely formed, I believe, about ten o'clock, or between ten and eleven o'clock; they appeared to me to be completely formed.

Q. Did not the Victory begin to engage the French Admiral in the center of their line?

A. The Robuste chasing from the fleet that morning, threw her at too great a distance for me to judge precisely of that event.

Q. Had you an opportunity of seeing the Formidable coming to action?

A. I saw the Formidable go into action, but I cannot say precisely at what time, not exactly.

Q. Did you observe, Sir, several ships of the Van of that line fire at her, which she did not make any return to before she began to engage herself, before she began a close engagement herself?

A. I know that the French ships fired a great many shot at the Robuste, which the Robuste did not return till she came near enough to do execution, and then I judge of the Vice Admiral's conduct by my own.

Admiral Montagu. I ask your pardon, that is not, in my own opinion, an answer to the question. The question is, did you observe several ships of the French fire at her (the Formidable)? You answer, the French ships fired a great many shot at the Robuste.

Q. Did you see them fire at the Formidable?

A. No, I did not observe it.

Q. Did you see the Formidable close engaged with some of the ships a-head of the French Admiral, in the French line, in the beginning of the engagement?

A. I cannot speak positively with what ships the Vice Admiral of the Blue began to engage.

Q. Was not the Formidable as long and as close engaged as the Victory was?

A. I cannot say how long the Victory was engaged; but that I saw the Vice Admiral of the Blue engaged from the time he began his close action till he passed the rear of the enemy's fleet.

Q. Was not the Victory, while she was in action, supported by the whole of the Admiral's own division and part of the ships of the Vice Admiral of the Blue's division that had joined them?

A. I take it for granted that the whole of the Admiral's division gave all the support to the flag that they could possibly do. I have been informed—

Court. You will speak to your knowledge?

A. I don't know, I take it for granted.

Admiral Montagu. That is no answer to the Vice Admiral's question.

A. It is impossible to see, in time of close action, what other ships are engaged.

Prosecutor. Was the Formidable supported by the whole of her own division, part of the ships having been taken from her, by signal, to chase?

A. No.

Q. How many ships remained a-stern of the Formidable?

A. I believe six of that part that chased to windward; I really cannot say as to any other.

Q. I am speaking, when we were ranging along the French line, I desire Captain Hood to say, what ships remained a-stern of the Formidable while she was engaged?

A. I cannot speak positively to any more than what I have, I don't recollect more than the six sail.

Q. Was your ship one of them?

A. My ship was one of them, certainly.

M

Q. Can

Q. Can you name any of the others?

A. The Terrible, the Elizabeth, the Egmont, the Worcester, the America, there may be more ships to leeward, the Egmont passed a-head of me.

Q. Was Captain Hood certain with respect to the Egmont and America?

A. We were standing upon different angles, we were drawing up to the enemy; I was going along the line, the America was to leeward of me a-stern; as to my going a-head of the Formidable I cannot say.

Q. Did the Admiral with the Van and Center divisions and such of the ships of the Vice of the Blue's division as had joined them, after passing the Rear of the enemy's line, immediately wear and double upon the enemy, and continue the engagement?

A. I do not know whether the Van or Center, with such ships as had joined, (I don't know what ships did join them) wore or tack'd; I did not see them, not at that moment; I was engaged; I was not out of the fire of the enemy.

Q. Do you know whether the Admiral kept so near the enemy, after they had passed them, as to be ready to renew the engagement when the Vice of the Blue came out, or to countenance, or to support him, while he remained engaged with the few ships that remained with him.

A. I do not know.

Q. At the time when you came out of the engagement, how far was the Admiral distant beyond the French Rear?

A. When the Robuste came out of the Rear of the enemy, I judge the Admiral might be about two miles off the Rear of the enemy.

Q. Did you observe at that time which way his head was?

A. He was standing towards the enemy.

Q. Then before that had he not been at a greater distance?

A. As I do not know how long the Victory stood, after she had passed the enemy, and as I cannot pretend to say when she did wear; it is impossible for me to speak of distances.

Q. When was the signal for battle hauled down?

A. According to time, in my ship, about two o'clock.

Q. Did you observe the Admiral unbend his main top-sail, while standing towards the enemy?

The Admiral. If it would save any time I admit I unbent it at the time the Vice Admiral asks.

Admiral Montagu. You have admitted the same every day.

A. I did not see the Admiral unbend his main top-sail; I was informed he did.

Prosecutor. Let it be noted in the minutes, the Admiral admits it.

Q. Did you observe the Formidable, as soon as she had passed the Rear of the French line, wear and lay her head again towards the enemy?

A. Yes, I did.

Q. Was not the Victory and the body of the fleet standing towards her and the French fleet?

A. They were.

Q. Did you afterwards observe some of the French ships that wore and stood directly for the Formidable?

A. I did not see the French ships wear at the time the Vice Admiral alludes to.

Q. Did you see any standing towards her, if you did not see her wear?

A. Yes.

Q. Did you observe her to wear again, and lay her head towards the Victory?

A. I did not.

Q. Did you see her meet the Victory, when she and the Victory met?

Admiral Montagu. I should beg, before this question is answered, to know, whether the Victory and Formidable did meet.

A. I do not know she did meet.

Admiral Montagu. Did you see the Victory and Formidable meet each other?

A. No.

Admiral Montagu. Then take the Vice Admiral's question.

Did you see her and the Victory meet?

A. No, I did not?

Prosecutor. At the time you have mentioned you saw the Admiral about two miles distance from the enemy, standing towards the French fleet, did the body of the fleet appear to be with him?

A. There appeared to be a great number of ships with him, but I did not count them.

Q. Was not that the time, when you described the Formidable was laying her head towards the enemy again, and how much nearer was she to the enemy than the Victory?

A. The Formidable, at that time, appeared to be pretty near a-stern of the Rear of the French fleet, and within a small distance, as it appeared to me.

Q. Was not, at that time, the Vice-Admiral of the Red and his division laying to windward of the enemy's Rear?

A. At that time the Victory and the Vice of the Red were to windward of the Rear of the enemy.

Q. Did you see the Admiral wear then, and stand from the enemy.

A. I saw the signal on board the Victory, for the fleet to wear.

Q. Did they wear?

A. They did wear.

President. What time?

A. Between two and three o'clock, according to time in the Robuste.

Q. When the Admiral had wore, was the course, he then stood, from the enemy?

A. Yes.

Q. Did you observe the French fleet to break up their line of battle and become in confusion?

A. The French fleet did break up their line of battle, but at what particular precise time, I cannot pretend to say.

Q. Was it at, or about the time when the Admiral wore and stood from them, or was it before or after?

A. To the best of my recollection, it was after.

President. When the Admiral wore, and stood from the enemy, did he go close-hauled, or from the wind?

A. I believe, the fleet were close-hauled.

The Admiral. Did you understand the answer you have given? You said, after the time.

Q. After I had wore, was it?

A. After you had wore, to the best of my recollection.

Captain Duncan. Was the whole of the Vice-Admiral of the Red, and the Admiral's division on the larboard tack, when the signal was made to wear?

A. I cannot speak positive to the whole, but the Admiral's, as far as my collection will serve me, were upon the larboard tack.

Q. From the description you have given of the Admiral and the Vice-Admiral of the Red being to windward of the enemy, with many of the ships, the body of the fleet about them, if instead of the Admiral's being at two miles distance from the enemy, they had been as near to the enemy as the Formidable was, when she wore, upon coming out

of

of action, would it not have been a favourable opportunity to have re-attacked the French when they broke up their line?

A. I do not recollect that I made use of the word body of the fleet, I said, many.

Judge Advocate. It stands many, now, instead of body.

A. If that number of ships, which I have described, had been as near to the enemy as the *Formidable*, and the Admiral had thought the ships were in a condition to re-attack the enemy, it appeared to me to be a favourable opportunity for doing it.

Prosecutor. Even, if they had advanced, from the situation they were then in, do not you think that the French fleet might have been attacked, and prevented from forming a new line of battle?

A. The situation of those ships, being to windward of the enemy, gave them an opportunity of attacking the enemy, provided the ships were in a condition, of which I cannot be a judge in my distant situation, I can only take it from positions.

Q. From the very brisk fire kept up, and the very distinguished good behaviour of all our ships that did get into the engagement, have you any reason to suppose the French did not suffer in proportion to the English fleet?

A. I have every reason in the world to believe, that the ships of that division did their duty to the best of their abilities.

Q. I am speaking of the whole?

A. I thought you had been speaking of that—

The question read again.—*A.* I must conclude they did suffer, because, of the very brisk fire that was kept up, by all the King's ships, those that got into action.

Admiral Montagu. Whether they suffered so much as ours, in your opinion.

A. They must suffer; I saw a great many of them myself suffer.

Prosecutor. Are you of opinion they did suffer in proportion?

A. I judge, they did suffer in proportion.

Q. Did you observe the French fleet as much disabled in their masts, yards, and sails, as the English fleet?

A. I don't recollect that either the British fleet or French fleet suffered in their masts, not their lower masts being carried away, by the action.

Admiral Montagu. I don't say, carried away, I say, disabled; a ship may be disabled in masts and yards, and not carried away, yet they might be shot all to pieces.

A. I cannot be a judge, whether a mast is shot or not, at a distance; I can only speak to what is oftenfible; I cannot say how far they were disabled.

Admiral Montagu. Do you not think a ship may be so far disabled, without carrying away her lower masts, as not to be able to pursue an enemy for some time?

A. Certainly.

Q. You have said, Sir, in the course of your evidence that the *Robuste* was disabled, after she came out of the action?

A. She was.

Q. Please to relate to the Court the state she was in, after the engagement, and how many hours, or what time it was before she was in a condition to pursue the enemy, provided the Commander in Chief had thought proper so to do?

A. I desire of the President to know, whether I am to relate every particular, for, it will be almost impossible for me to go through the whole of it.

Admiral Montagu. I don't mean every brace and bowling, and running rigging will come into

that, I will say, fails, masts and yards, and such as would prevent the ship from making sail?

A. I am very happy in having an opportunity of presenting the state of the *Robuste*, before this Honourable Court. The *Robuste* began to engage—

Admiral Montagu. I desire to know your defects, after the engagement?

A. Sir, when I came out of the action, she had a large shot through her main-mast, one through the center of her fore-mast, and another oblique; she received also two shots in her bow-sprit, one immaterial, one in her mizen-mast, her main top-sail yard was shot away, part of it came down hanging upon the quarter deck, her fore-top gallant mast was shot in two; she received two shots in the mizen yard; she received, I believe, under water and a little above the water eleven shots, and thirteen in her upper works.

Admiral Montagu. Can you remember, how many under water?

A. I believe there were three or four under water, one very dangerous one; her main top-mast was shot in two or three places, but they were not such as would prevent the ship from carrying sail upon it; it is impossible for me to say, Sir, the state and condition of her sails.

Admiral Montagu. What, do you mean they were so bad?

A. They were so much shot; I could give the Court very good information, most of her braces, bowlings, and running rigging were shot away, and many of her shrouds.

Admiral Montagu. Do you mean lower?

A. Lower and top-mast; one of the shots between wind and water was, I believe, a six and forty pound shot; it struck the ship about five or six feet under water; it took place directly again the orlop beam and futtock rider, in consequence of which, the ship made a great deal of water, from that and other shot; a very unfortunate one it was for me.—I had given directions to wear my ship immediately, upon the *Formidable's* wearing, when the Carpenter came to the First Lieutenant and told me, it was impossible to wear; I forgot to say, there were two of her starboard ports knocked away, which made it impossible for the ship to wear; my answer to that was, it was an evil I must submit to, and I was obliged to continue upon the same tack, my purpose being to have renewed the action instantaneously with the first ship that I could have laid along side of.

The Admiral. He has not answered the question.

Admiral Montagu. How long was it before your ship was able to pursue the enemy, supposing the Admiral thought proper to have done so?

A. My first object was to repair the damages my ship had sustained; there was a great deal of water in the ship, and the people were extremely alarmed, I ordered the Carpenters immediately over the sides to stop the leaks.

Q. Can you tell, how many hours?

A. I fancy, it was between three and four o'clock, according to the time of the *Robuste*, before I could put my ship's head the other way.

President. What time was it, before you was in a condition to renew the attack?

A. I tacked the ship at four o'clock; I should certainly have renewed the attack, had I been a single ship, as soon as the leaks had been stopped; before the leak, I have described, was stopped, it might be seven or eight o'clock.

Q. Were your sails and rigging in a condition to renew the attack?

A. I tacked the ship about four o'clock; she was in such a condition, I got the main tack on board; I should certainly have renewed the attack, had I been

been a single ship, as soon as my leaks had been stopped.

Captain Duncan. In the condition your leak was in, when you tacked, do you think your ship was fit immediately to have renewed the attack?

A. No, she was not in a line of battle, or in any body of ships.

Prosecutor. Captain Hood has answered, in respect to the condition they were in.

The Admiral. Read his answer to that question.

[*The question and answer read.*]

Prosecutor. Did Captain Hood observe one of the ships of the line of the French fleet to bear away from the line, and go off with her main yard shot away, with a frigate to attend her?

Q. Did the French fleet remain one ship less than before?

The Admiral. I allow it.

Court. Take it down.

Q. Would the manner of renewing the attack, as I have described in a former question, have required a pursuit, having stated the French fleet to have broke up their line, and beginning to form a new line, with their heads towards the British fleet?

A. It depends very much upon the operations of the enemy's fleet.

Q. Were the enemy's fleet permitted to form a new line unmolested, standing after the English fleet?

A. I don't recollect the time the enemy began to form their new line; in the evening I observed the enemy's fleet standing, drawn up to leeward of us, but not in a well formed line, part of the Rear, appeared to me to be in some confusion.

Admiral Arbuthnot. Were you in a condition to have obeyed the signal for reattacking, if you had been ordered so to do?

I am speaking of the time in which the French fleet has been described to be in confusion, and that there was the Vice-Admiral of the Red, and some of the Admiral's division to windward of you.

A. I understand you now.

Q. And had you been one of those ships, and the Admiral thought fit to order your ship to re-attack, was you in a condition to have gone to the attack?

A. No, not at that time, in that condition it was impossible.

Q. Did, or did not the Admiral stand away as directly from the enemy, as the wind would permit, from the time he passed the last ship of the enemy's line during the whole of the afternoon, and night of the 27th, except during the interval between the two times of his wearing in the afternoon?

Captain Hood. I must beg to know of the Court, whether the two wearings are admitted, because I cannot speak positively as to her wearings.

Prosecutor. Then I will put it between the two supposed times of his wearings in the afternoon?

A. After the British fleet wore to the southward, with the starboard tack on board, it continued upon the same tack the whole afternoon, and during the night we were a-head of the enemy.

Q. Was not that as direct a course from the enemy as we could steer, or the wind permit?

A. I take it the two fleets were standing upon parallel lines, the British to windward, and the French to leeward.

Q. At the beginning of the time you were speaking of, when the Admiral wore and stood to the southward, were not the French all a-stern of him?

A. They were.

Admiral Montagu. I beg before the Court breaks up to ask Captain Hood one question, re-

lative to the answer he has given now, in the situation you have described the English and French fleets to be then standing upon parallel lines, the British to windward, the French to leeward, do you think the Admiral of the British fleet was then flying from his enemy, running away from his enemy?

The Admiral. Take that down, Sir, it is a very important question.

Admiral Montagu. I would have it in the words of the charge in the 4th article.

[*States the article, concluding with disgraceful to the British flag, &c.*]

Later end of the question was. In the situation you described the English and the French fleets to be in, do you think the Admiral of the British fleet was then flying from his enemy?

A. At that time, to be sure, there was no appearance of flight.

Admiral Montagu. At any time, during that day, or while the French fleet was in sight of the English fleet, did the British Admiral shew any signs of flying from the enemy?

A. There was no other moment of the day, than what you have described, that could have the appearance of it.

Q. You described the former part of the day was pursuit.

A. Before the action.

Admiral Montagu. In the answer you have given to the Vice-Admiral's question, you have said, the two fleets were in parallel lines, the British to windward, and the French to leeward, do you think that the French, when to leeward, laying in that position, was chasing and endeavouring to come up with the British Admiral, who is supposed to be running away, to give him battle, and had the French Admiral all the sail they could set, all the sail they could crowd; because, it is said, he pursued it with the fleet of France, and offered it battle, that is in the words of the charge.

A. As near as I can recollect, the position of the two fleets, about eight o'clock in the evening, or somewhat about that time, the English fleet to windward, in that parallel situation, which I have described, were forming, or endeavouring to form a line of battle, and had been the whole afternoon endeavouring to form a line of battle, from three o'clock, the signal was out for a line of battle, the French fleet being to leeward, appeared to me, to be performing the same evolutions.

Q. Forming a line?

A. Yes, forming a line; it was the last observation I made upon the fleet; towards the close of the evening the Van of our fleet seemed to be advanced before the Van of the enemy, and as near as I can recollect, the Victory seemed nearly opposite to the Van; I don't say positively but nearly; ships or fleets in those situations, one cannot conceive, are either chasing, or flying.

Admiral Roddam. As the enemy had been long in sight, and you expected to attack or be attacked, when the Robuste, and five sail more were ordered to chase to windward, do you think, or does your judgment, as an officer, lead you to think, that the signal was made for those ships to close the fleet, or scatter you from the fleet?

A. To close what fleet?

Admiral Roddam. The Center division, I suppose.

A. I gave my evidence upon that question; the signal being thrown out for those ships to windward, to continue so, from five or six to ten, it must have increased the distance from the Center.

Q. If you stood till twelve o'clock, it would have increased it further?

A. Most certainly.

Q. But was that signal to close you to the fleet, or extend you from it?

A. It

A. It is impossible for me to answer, what the Admiral's intentions were, as to that signal, I can only speak to the precise distance of the Centaur and Robuste, I cannot tell the Admiral's reasons.

Q. I ask your's?

A. It threw those ships at a greater distance.

Q. I will ask you another question. Suppose no signal had been made, would you have stood from the Admiral, or chased?

A. I should not have chased at all.

Q. Were any sail a-head of you?

A. None, Sir.

Q. You were to chase, by signal, to windward?

A. We were all upon the same tack.

Q. But the Admiral tacked?

A. We tacked the moment the Admiral did.

Q. Was it to close them?

A. It extended them, certainly.

Court. You never tacked 'till the Admiral did?

A. No, Sir, the signal was made for altogether to tack.

Q. When the signal was made, by the Admiral, for your ship and five more to sail to windward, did you then look upon it you was to make the best of your way to the French fleet?

A. The chasing to windward, undoubtedly, increased the distance from the center of our fleet, and brought us nearer to the French.

Q. If the wind would have permitted you to have got up with the French fleet, would you have thought it your duty to have brought the enemy to action?

A. Certainly not, without the signal for battle.

[Court adjourned till Ten o'clock on Friday morning.]

Eighth Day's Proceedings, January 15, 1779.

Captain HOOD called.

[Admiral Montagu desired the last question, put yesterday by the Court to the witness, should be read, and the answer.]

Admiral Montagu. On the 28th, in the morning, when the French fleet was seen to leeward, at a great distance, not in a line of battle, but in a heap, would it have been prudent, in the situation the British fleet was then in, for the Admiral to have pursued them?

A. I did not see the French fleet to leeward, in the morning of the 28th, except three sail.

Q. Did you see when the Admiral made the signal, in the morning of the 28th, for three ships to chase, any ships make a signal for setting up their rigging?

A. I saw the flag for some ships to chase to the south-east, early in the morning; I don't recollect any signal being made for setting up rigging at that time, when the signal was made for chasing.

Q. At what time in the morning, or how long after the signal was made for chase?

A. The signal was out a very short time; I cannot say what time.

Q. Did you make that signal?

A. I did, but not till after the Admiral had made the signal, to the best of my recollection.

Admiral Montagu. Captain Hood says, he did not make the signal first; that the Admiral made a signal to know, if any body wanted to set up rigging, in consequence of which, he says, I did want to set up mine.

Prosecutor. There is a signal appointed, when any ship wants to put up rigging, for them to make.

Captain Hood. The whole fleet made it; at least, all the disabled part of the fleet made it.

Prosecutor. I would ask, if he knows any good reason, why those three ships were not chased?

A. I cannot pretend to give reasons for the Admiral; he is to judge, whether the ships are, or are not to chase.

Q. Was the signal made, for setting up rigging, before the Admiral laid his head to the northward?

A. I cannot speak with respect to other ships; I can only say, I did not make any signal for setting up rigging till the fleets head was to the northward, to the best of my recollection, and remembering a thing I had never taken any minute of.

Q. While your ship was engaged, Sir, was any other ship so near to you as to be of support to each other?

A. I did not see any ship a-head of me, or any ship a-stern of me, in passing along the French line, nearer than a mile, to the best of my judgment, in estimating distances.

Q. Captain Hood has related to the Court the numerous damages his ship sustained in the action, was it, or was it not occasioned by the ships being scattered, dispersed and separated, so as not to be able to support each other?

A. I have given my answer to the two distances of the Robuste from the ship a-head, and the ships a-stern of the Robuste, which is all that I can say upon the subject.

Q. I would ask Captain Hood, whether by the Admiral's shortening sail, while standing towards the enemy, hauling down the signal for battle, wearing and standing to the southward, with the French fleet then a-stern, did you, or did you not then conclude that the Admiral had determined not to re-attack that evening?

A. I have already said, I did not see the Admiral shorten sail, when the signal for battle was hauled down.

[The question read to him again.]

A. I cannot pretend to judge of the Admiral's determination.

Q. Have you since been of that opinion, from the various motions of the Admiral's, at that time, and from the Admiral's own account, published by authority?

The Admiral. I beg pardon; that letter of mine, I apprehend, must not be commented upon by itself, and Captain Hood ought not to judge of my letter.

Admiral Arbuthnot. I dare say, Captain Hood will give a very proper answer.—I apprehend Captain Hood is upon his oath to give an account how things struck him upon the action.

Admiral Montagu. There is another question before it, whether he knows the letter, in print, to be the original letter of Admiral Keppel?

Judge Advocate. The Court have agreed, that this question is not a proper one to be put.

[The Court desired the question to be then read, which was done accordingly.]

Prosecutor. The Court having decided that question not to be put, I shall beg leave to call Captain Hood and put the question to him, after I have proved the Admiral's letter.

The Admiral. Whenever that letter is shewn to the Court I shall admit it, and after that I shall object to that question being put to any witness.

President. Then we shall divide upon it.

Prosecutor. When that letter is proved I shall take the opinion of the Court.

The Admiral. Then I shall object to it.

Prosecutor. If the Vice of the Red, and his division, did not bear down into the station of the Vice of the Blue that afternoon of the 27th?

A. I was too much engaged in the business of my own ship to observe that operation.

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Q. I

Q. I would ask Captain Hood, as an old officer, that has seen a great deal of service, whether he ever knew, while the signal for the line of battle was flying, the Commander in Chief to order the Van or the Rear division to take place of the other without he was satisfied that one of those divisions was disabled from taking its proper station.

A. During the course of my service I do not remember to have seen that done.

Q. Were not the Vice of the Blue with his ships, and those then with him, the last that came out of the engagement, and disabled?

A. They were the last that came out of the engagement, and were disabled: I cannot speak positively as to all of them.

Q. Is there not a signal appointed when the Commander in Chief wants the Commander in the second or third post, with their divisions, to make more sail?

Captain Hood. Before I give my answer, may I be permitted to look at the fighting instructions?

The Admiral. There is no doubt there is such a signal.

Captain Hood. It is the twelfth article of the fighting instructions.

Court. Yes.

Captain Hood answered to the question. Yes.

Q. Was there not a signal for all flag-ships to come into the Admiral's wake or grain?

A. Yes, it is the eleventh article of the general fighting instructions.

Q. Was your ship to windward of the Victory within half an hour after the Victory wore and flood to the southward?

A. She was at that time to leeward from the Victory.

Q. Did you observe any signals made in the night of the 27th by the French fleet?

A. The early part of the night I saw some signals by rockets, or something of that kind.

Q. Did you observe them to bear away in the night?

A. I did not.

Q. Do you know if any signal was made in the morning of seeing the French fleet upon the 28th?

A. I do not know of any signals being made; but I have heard there were some.

Q. At what distance were the three ships you have mentioned from the British fleet do you reckon?

A. I cannot pretend to ascertain the distance with exactness; they appeared to me, if my eye does not deceive me, to be about four or five miles from the Robuste—I cannot exactly say; it is impossible to ascertain the exact distance: I defy the best eye that ever was to do it; distances are vague things.

Q. Whereabouts was the Robuste at that time with respect to the Formidable and Victory?

A. She was to windward of both.

Q. Then, were those ships nearer to any other parts of the British fleet than they were to the Robuste?

A. They were.

Q. Did they appear to you to be line of battle ships or frigates?

A. They appeared to me to be line of battle ships.

Q. Did the Admiral lay the fleet early in the morning of the 28th with their heads to the northward?

A. The Admiral did lay the fleet early in the morning with their heads to the northward; but I do not know the precise time.

Q. Which way did those three French line of battle ships stand?

A. I want to know the time that you mean: is it when first seen, or when they made sail?

Q. When they made sail?

A. They made sail to the eastward, going large, or rather before the wind.

Q. What latitude was the Robuste in that day at noon, upon the 27th?

A. I must beg to look at a paper I have in my pocket—Monday the 27th, in 48 deg. 16 min. is the latitude delivered to me by the Master of the Robuste.

Court. At that time?

A. It is his day's work, taken from the journal.

Q. What was the bearing and distance from Ushant at that time?

A. North 81, East 45 leagues; but I must beg to say to the Court I believe the ship was nearer to land than she was by her reckoning.

Q. Did your reasons for supposing she was nearer to land arise from a back reckoning since that time?

A. The reasons arise from the sailing of the ship from that day till we made land.

Court. What land?

A. We made sail—I think we did not make Ushant.

Court. You made the English coast?

A. Yes, we did not make Ushant.

Q. Had you any reasons at the time?

A. No.

Q. Supposing yourself at that distance, at 45 leagues from Ushant, do you apprehend there would have been any immediate danger if the fleet, our fleet, had pursued those three French ships, as well as the rest of the French fleet, said to be in fight?

Admiral Montagu. If any body has proved they saw the French fleet, it would be a proper question to ask.

A. I must beg leave to observe, that on Tuesday, the 28th at noon, the Robuste was but 38 leagues from Ushant—I only state it, that there may be no mistake in the days.

Admiral Arbuthnot. Between seven and eight?

A. Yes, Sir.

Admiral Montagu. Then at noon, 38 leagues from Ushant, you saw them?

A. Yes.

Prosecutor. Then, change the distance of 45 deg. to 38, supposing yourself at that distance of 38 deg from Ushant, do you apprehend, would there have been any immediate danger, if the fleet had pursued those three French ships?

A. There did not appear, to me, to be any immediate danger.

I will ask first a previous question.

Q. How was the wind and weather on the 28th?

A. The wind was westerly, and the weather moderate, I think.

Q. In the middle of summer, with short nights and moderate weather, do you apprehend there was any imminent danger, if the fleet had chased till they had seen these three French ships and the rest of the fleet, into port?

A. I do not think there was any imminent danger; but the Admiral must be the judge.

Prosecutor. I have done with Captain Hood.

Captain Duncan. Was your ship in the morning, of the 28th, in a condition to chase as a man of war should do, when her signal was made to chase?

A. The Robuste, in the morning of the 28th, was not in a perfect condition to chase.

Admiral Montagu. I have another question to ask.—Do you think, supposing the British fleet to sail equally well with the French fleet, there was a probability of the Admiral's coming up with them, before night, provided they continued to fly from him?

A. I think not.

Q. Sup-

Q. Supposing the British Admiral had chased the French fleet, and seen them go into port, supposing himself to be within four leagues of the French coast, and a gale of wind had come on, would not the British fleet have been in great danger, in the condition it was in, making the enemy's coast a lee shore?

A. I certainly think, the disabled part of the British fleet would have been in danger.

Admiral Montagu. I have but one more question that comes to the 27th.

Q. Had the French fleet, after the action of the 27th, when to leeward, continued to lay to till the next morning, do you not think Admiral Keppel would have bore down and engaged them, provided the ships were in a proper condition so to do?

A. He certainly would, in my opinion.

Court. Upon the morning of the 27th, when the Robuste's signal was made to chase to windward, what was her situation, with respect to the Victory and Formidable?

A. I have already given in evidence, that I was not upon deck till after the Robuste had chased, by signal, or words pretty near to that effect; I therefore cannot state the situation of the Robuste, before that signal was made, but from the report of the officers.

Q. Can you recollect, she was much to leeward of the Victory?

A. She was not much more to leeward of the Victory, when I came upon deck, than she was to windward of the Formidable, so far as I recollect, not much to leeward, it might be a mile and an half, or something of that sort, or two miles.

Admiral Arbuthnot. You was in your station before you chased?

A. I was by the report of my officers.

Captain Duncan. By your having chased to windward, did you not get sooner into action than you would have done, had you not chased?

A. I believe not.

Q. Had you been in a line of battle, on the star-board tack, and of consequence in the Victory's wake, would you not have passed the enemy at a much greater distance than you did?

A. I cannot answer that question.

Q. Was the enemy's shore a lee-shore, as the wind was on the 28th, in the morning?

A. The wind was W. N. W. I believe, in the morning of the 28th.

Q. Was that a lee-shore, or not, in your opinion?

A. It blows directly into Brest, I think it does.

Court. You are right.

The Admiral. Mr. President, may I be permitted to ask Captain Hood some questions, relative to the alteration, that he has admitted, was made in the log-book.

Q. Where is the entry of the Robuste log book, of the 27th and 28th of July, as it stood originally?

A. I really do not know.

Q. Did you see any rough minutes of these two days transactions, before they were entered into the log-book, and were they approved by you?

A. I certainly did see it in a rough paper, and not knowing, but, at that time, it was correct, it was inserted in the log-book.

Q. Was it inserted by your approbation?

A. I directed it to be wrote in the log book.

Q. When was it, that the alterations and additions were made?

A. I do not remember the day, but the Master

having been already before the Court, I submit the day to his recollection.

Q. As you cannot be precise as to the day, can you say whether you had then heard of the Court-Martial intended to be held on Admiral Keppel?

A. When I took into consideration the alterations and corrections in the Robuste's log-book, I had not heard of any intention of Admiral Keppel's being to be tried.

Q. I would ask Captain Hood, when he ordered these alterations and additions to be inserted, had he not then heard of Admiral Keppel's Court-Martial being intended to be held upon him?

A. I had not heard of Admiral Keppel's Court-Martial; but it was rumoured here.

Q. Captain Hood will be so good as to explain, what he means by a rumour, when he had not heard of it.

[No answer.]

Q. What do you mean by a rumour of a Court-Martial, which you had never heard of?

A. What I mean by a rumour is, that a great many people were said to be intended to be tried; common talk, common conversation.

Q. When the alterations were actually made, in your presence, had you then heard of Admiral Keppel's intended trial, or not?

A. I have already said, I had not heard of Admiral Keppel's intended trial.

The Admiral to the Court. As Captain Hood has referred to the deposition the Master of the Robuste has made, may I beg to have what he has said, upon his oath, read to him?

[It was read accordingly.]

The Admiral. There are other things in the minutes; I think the Master said ten or fourteen days.

Captain Hood. May I be indulged one moment to speak, to prove to the Court, how very inaccurate the Master is, in respect to the days; because, I will appeal to the President of this Court, that, upon the fourth of December, I applied for public leave of absence to the Admiralty, and arrived here the 7th, and the Admiralty gave me notice of it; I was detained here, and I did not take my leave till, I believe, as far as my memory will go, the letter I received from the President here was the 16th, if I mistake not, from the 16th to the third of January, I was in London, upon public leave; now I only mention this to shew the incorrectness of his memory, with respect to time; this is an authentic thing; I can produce the Admiralty letters, I can produce the President's letter; I can prove the return to this Court was upon Sunday, I think, the third of January, so there makes a space of 20 days directly contrary to what the Master has said, not with any evil intention, I am persuaded, to do me any injustice, but not having recollection with regard to logs.—I will mention another very extraordinary thing in the log book, subsequent to the time of the 27th and 28th. The Master has said, I looked at the log-book every day; I perhaps do, with rather more attention than some others do; I may less than others. Upon the 9th of September, or October, I cannot recollect whether one month or the other, unless I was to be very exact in my enquiries, I sent for the Robuste's log-book; I sent for it the 13th, I believe, and when it came, the Mate and the Master had carried it on farther than the 9th, so that there were four days to be inserted; upon which I sent to the Master and asked him, how he came not to put every day's work in the log-book? he said, he had got it in a rough sheet, a rough copy, that, he thought, was as well. I immediately gave my orders to go and insert the days

days works in the log-book; he brought it up to me, and he had put down the day, the 13th, next to the 9th, and omitted the 10th, 11th, and 12th; I sent for him again, and asked, how it came? he said, he did it in a hurry. Now that is to shew, how very incorrect, or how uncertain it is, to put any strength in the log-books, those three days being left out, and the log obliged to be altered, to put in the several days. As to alterations of the log-books, I do hope, as I stand here, and I could wish, upon this occasion, I may be the person to bring forth a better mode of establishing log-books, or a total rejection of them.

President. Can you recollect the time the alterations were made?

A. I do not know the day; I submit that to the Master's recollection; if he says it was after the time, I must stand by it, that is, if he says so—if Admiral Keppel is not satisfied, he may carry it on as far as he thinks proper.

The Admiral. I desire all he has said may be taken down.

Judge Advocate. I can take it down, after the Court breaks up, equally well from the short hand writer's notes, if the Court will permit it.

The Admiral. Then am I to understand you, upon the oath you have taken, that you had not heard of Admiral Keppel's trial, before you ordered those alterations, of my intended trial, when you directed those alterations to be inserted?

A. I believe, I have answered that question already.

The Admiral. I have not understood it then.

Captain Hood. I must beg it may be read.

The Admiral. I must beg you will answer it straight and direct.

A. I chuse what I have declared before to be read; I apprehend I have answered it before; I beg it may be read.

The Admiral. I desire to have that question answered.

The question read. Am I to understand you, upon the oath you have taken, that you had not heard, &c.

A. I heard it as common conversation, but nothing farther, I could have it no otherwise than from common conversation.

Q. Had you not heard (when the additions and alterations were inserted) that Sir Hugh Palliser had charged me with some offence?

A. I never heard of any charge, nor of what the offences were, nothing had come out to my knowledge.

Q. Had you not then heard that Sir Hugh Palliser had exhibited a charge against me, though you did not then know the particulars of it?

A. I have already acknowledged that I had heard of the intended Court-Martial, of course there must be some charge.

Q. Had you ever conversed or corresponded with Sir Hugh Palliser, directly or indirectly, upon the subject of Admiral Keppel's trial, before you made the alterations in your log-book?

A. I never conversed with Sir Hugh Palliser upon that subject.

Q. Nor corresponded?

A. Letters passed, but nothing relative to the charge.

Admiral Arbuthnot. You will save yourself a great deal of trouble, if you had said in your answer, you did, or never did.

A. I have said, I never conversed or corresponded with Sir Hugh Palliser upon the subject of the charge.

Q. Have you conversed with him upon the subject of the log book?

A. No, never, Sir.

Q. Do you mean to say, that, in all your correspondence, or conversation, it has never been upon the subject of the trial, or additions to the log book?

A. Never, upon my word, and Sir Hugh Palliser never heard a syllable of the log book, I believe, till after the trial commenced; never, to my knowledge.

Q. Am I to understand, Captain Hood, when he said nothing, with regard to the log-book, did he mean nothing, with regard to the trial, neither?

A. At what time?

Q. Before the alteration, inserted in the log-book?

A. No, never about the trial, not in the smallest degree.

Q. What led you to discover, Sir, four months after the transactions of the 27th and 28th, any errors in that state of the transactions, in those two days, which you did not observe at the time?

A. I was led to the discovery of the truth, for the sake of myself.

The Admiral. Now, Sir, we will come to the alteration Captain Hood admits that he made, in order to ascertain that I must put this question:

Q. Did your original log-book state, that the Admiral was making much sail, in the evening of the 27th?

A. I do not recollect it did.

Q. Does Captain Hood know, it did not contain it?

A. I have declared it yesterday, that it did not; that the alteration was so and so; I went through all the four alterations; I cannot unsay what I said before; it is impossible.

Q. To what hour does that insertion in the log relate?

A. It relates to part of the night, not any part of the day.

Q. What hour is it put to?

A. It is put, as far as I recollect, to part of the first watch, and part of the middle watch, but I don't believe the hour is put down.

Q. This is only narration, and running on without any particular hour fixed?

A. I will give it to the best of my recollection.

The Admiral. Mr. President, as that alteration in Captain Hood's log-book tends to affect my life, I shall ask him no more questions.

Prosecutor. I desire to offer a few words to the Court, in consequence of what Mr. Keppel has said.

The Cross-Examination of Admiral Keppel is tending to attack the credit and character of Captain Hood, I think it proper to give notice, that in the future progress of this trial, I shall examine the Master of the Robuste, and other witnesses, to resist so cruel an attack upon the character of a gentleman of his services and merit, and to confute the invidious attempt that has been made.

The Admiral. I beg pardon, it is such an accusation upon me for asking him, what I conceived to be proper questions.

Admiral Montagu to the Prosecutor. Sir, the prisoner has a right to ask such questions as will save his life.

Prosecutor. It is to take off the impression of what has passed, relative to Captain Hood, and me, that that impression may not be left without giving notice; I intend to take it up in future, though I cannot do it now.

The

The Admiral. I agree to that, I asked Captain Hood straight questions, to which he should have said, Aye, or No; he has said, No, in very material parts; he has himself acknowledged the Admiral's making much sail is put into the log-book; I say, I shall ask no more questions of him, because that narration tends to affect my life; as to any thing else, respecting Captain Hood, I have said nothing, and he is making a very long narrative of what I have not said; I leave it to the Court to judge, how far the Prosecutor should go on with it.

Prosecutor. It concerned me.

Admiral Arbuthnot. I think it did not concern you.

Prosecutor. I beg your pardon, an attempt was made to prove he corresponded with me, relative to the trial and the log-book.

Admiral Montagu. He has denied it in his answers, and the Court are in the possession of it.

The Admiral. He has not denied he inserted that part in his log-book—Am I never, Sir, to examine a witness, without my being calumniated for so examining, and a protest entered against me; I do hope the Court will not suffer one word of that to be entered.

Prosecutor. I had something more to be inserted.

Court. We cannot suffer it to be inserted.

Prosecutor. As it is to prove the correspondence, I should hope to be indulged in it hereafter.

Admiral Montagu. You have a right to ask any question, you think proper, to make good the charge.

A Member of the Court. I beg that should be erased; the whole of it.

Admiral Arbuthnot. Sir Hugh, you will have an opportunity of calling your witnesses to prove the log book, if essential to this trial; the Master will be here.

Admiral Montagu. It is said, the Prisoner has attempted to take away the character of another man; he has not done so.

Admiral Arbuthnot. Captain Hood confessed he did make an alteration in his log-book; Admiral Keppel asked him, what induced him to do so; (whether it was to prove his correspondence, or any thing else, is nothing to the purpose) Captain Hood answered, he expected to be tried himself, and so chose to put the log-book in better language; that is the substance of all that has passed.

President. It is to be understood, the Prosecutor and prosecuted have a right to consult with their witnesses, after the trial is brought on, as much as they please; and you have an equal right, I suppose, with the Prosecutor.

The Admiral. Sir, I so little expected an accusation for my having failed in any one part of my duty on the 27th and 28th of July; it was astonishment to me; I was almost inclined to put up a paper for people to come to defend me; I did not know who to call upon; I desired every Captain to be called upon; and after that I took every pains I could, to know who could be called upon to prove matters of truth to support my innocence.

Admiral Montagu. I have one question to ask. Upon the whole of the transactions of the 27th and 28th of July, relative to the British fleet, did it appear to you, as an old and experienced officer, that Admiral Keppel by his conduct, upon either of those days, tarnished the honour of the British flag?

A. Before I give any answer to that question, I must beg to know of Mr. Presi-

dent, whether any part of my evidence is to be taken?

Court. Your evidence is taken down, it stands as a part of the minutes.

Admiral Montagu. And I presume, though the Prisoner did not chuse to ask any more questions of the evidence, the Court is not to be debarred putting the questions.

A. I have long had the honour of knowing the Honourable Admiral; I still respect him, notwithstanding my evidence will not be farther required; his character is far above my praises; I have given my evidence, as far as it has gone, with honour and integrity, the Court must therefore judge, and decide upon that question.

Admiral Montagu. I do not think, that is an answer to the question that I ask, you have heard the charge; the question that I ask, I do not think is answered; it is a part of the charge against the Admiral; and I should think that every Captain, commanding the British ships, on those two days, can acquaint the Court, whether, by the misconduct and neglect of Admiral Keppel, the honour of the British navy was tarnished?

A. The Court must know it from my evidence; I cannot be a judge.

Court. Captain Hood is ordered to withdraw.

Mr. GRAHAM, late Purser of the *Arethusa*, now of the *Valiant*, sworn.

Prosecutor. I call this evidence to shorten the proceedings; Captain Marshall spoke from minutes which, he informed the Court, were made by his Purser, and he could authenticate them; I only beg this Gentleman may authenticate those minutes, and that the Court may have the whole of those minutes before them, as upon Captain Marshall's examination, we had only a part, not the whole; I desire he may be asked, if he has the minutes with him, which he made on the 27th of July, 1778.

The Admiral. The Court will understand, I have no objection to the evidence the Vice-Admiral calls, but this Gentleman I should have called, to prove the same fact he is now going to prove; he is in my list.

Court. Have you got your minutes with you?

A. I have, Sir.

Q. Are those minutes, you have in your hand, the original minutes, made at the time, upon the day of the transactions?

A. They are not the original ones, but a copy of them.

Q. Where are the original minutes?

A. The original minutes were in a book, which was made particularly for the quarter-deck, and was kept there constantly, and copied in the log-book every evening, I believe by the Mate or Master; but about three weeks or a month after the 27th of July they were missing; I took a copy of them in the morning following the 27th and 28th; the Mate took a copy of them in the evening of the 27th.

Q. How do you know that?

A. He shewed me the copy, which he told me he had made of them that same night, in order to insert them in the log, as he had done the minutes of every day, previous to the 27th.

Court. Have you compared your's, and the Mate's together?

A. I don't recollect particularly that I have, Sir.

Q. Have you ever compared them with the original?

A. I compared them at the time I made the copy;

copy; I examined them myself, and know them to be just?

Prosecutor. Do you know they were entered in the log-book, by the Mate, upon the evening of that day?

A. I believe, they were not.

Q. Do you know, if they were in there afterwards?

A. I do not, Sir.

Q. Do you know what is done with that original minute-book, you speak of.

A. I do not, Sir.

Q. I think you said, about three weeks after, it was missing?

A. It was.

Q. Has it never been seen, since that time?

A. Never, by me.

Q. Do you know, or have you heard of any body else having seen it, since that time?

A. I have not.

Q. During those three weeks, in whose custody was it kept?

A. It was constantly in the binnacle, upon the quarter deck.

Q. Are the minutes, you are going to produce, an exact copy of what was originally entered in that old minute-book of that day, and nothing more in it?

A. There is nothing more, there is less, as I have not particularised the time in which the pendants were flying.

Q. Do you say, it is not a compleat copy of the whole, there being a part of it omitted?

A. The question was asked me, whether there was more or less; at the same time I was asked, whether it was a compleat copy; I say, there is nothing more, there is less, as I have not taken notice of the time of all the pendants; I took a copy of the minutes, more for my own satisfaction than the public inspection.

Q. If you omitted any part, what was your reason for omitting those parts?

A. As I wished to know the particular signals that were made, I took an account of the general ones, not only of their being made, but of the time at which they were made; but for the pendants, I only put them down in the regular order as they were made.

Q. Do you mean the original one, or the copy in your hand?

A. They follow in the copy in my hand, as they did in the original minutes, though the time is not expressed against them.

Q. In the original minute-book, are the signals by pendants entered in regular order, with the times against them?

A. They were.

Q. I should be glad to know Mr. Graham's reasons for omitting the times against those particular signals in his log-book?

A. As I observed before, it was more for my own information than for public inspection; I thought if I could be particular with respect to the general signals, the time of each particular ship's signal being made was a matter of no consequence to me.

Q. In the copy you are going to produce, is the time omitted against every ship's signal, or only particular ships signals?

A. Every ship's signal.

Q. When were they written?

A. The morning after the 27th.

Q. The same identical one?

A. This is copied fairer than either of them.

Q. Then it is not the first copy, made from your book?

A. It is not, but even that I can produce.

Q. Have you that about you?

A. No, Sir, I received Sir Hugh Palliser's summons not five minutes since, and therefore I did not put it in my pocket to be compared.

Court. Why did you take a copy of it?

A. Because, it was not wrote fair.

Court. When did you make this copy?

A. I believe eight or ten days since.

Court. Suppose, Sir Hugh, you examine him upon this, and to-morrow we can compare the other.

Q. Is it an exact copy of the copy?

A. It is an exact copy of the copy.

Q. And the time omitted in the first one?

A. And the time omitted in the first one: if I had known of being called upon this morning, I could have brought it.

Prosecutor. I desire he may leave the present one.

Court to the witness. You must leave it on the table.

Prosecutor. Would the Court wish to have it read now?

Court. If the first copy comes, you may examine it upon any occasion.

The Admiral. There can be no objection to its being read to the Court; it may be checked to-morrow, to see if it differs from the other.

Captain Duncan. I beg to ask, whether it is regular to read the whole signal book, from one end to the other—It does not appear to me a regular thing.

Admiral Montagu. I believe the minutes need only be read from the days the French fleet were in fight.

Captain Duncan. It seems to me no signal or other book should be read out—to ask questions about particulars is another matter; but reading a book from beginning to end is not a regular thing.

Prosecutor. The report of the minutes made during the day of action, is the whole I want.

President. I understand it is desired by both parties to be read.

The Admiral. I have no objection; but it is more regular to take article by article.

Captain Duncan. I must own I cannot think it a regular matter to read any book through, either minute-book or log-book: it is putting words into their mouths; it has never been done yet, and I presume it is not proper: if you read a signal-book in public, the Prosecutor, or Prisoner, may take words from it, which they did not think about before—examine him to particular signals, and give him leave to go to his book, to refresh his memory, but not read the whole of it through.

The Admiral. I hope the Court will be indulgent enough to determine it themselves.

Court to Prosecutor. It is agreed, you may ask what questions you please.

Prosecutor. What was the first signal on the 27th?

A. The first signal that I can give any account of was the signal for tacking, the Union at the fore and mizen top-mast heads.

Admiral Montagu. That is for the whole fleet to tack together: the signal for tacking is one thing, the whole fleet to tack together are different things.

A. It was Union at the fore and mizen top-mast head.

Q. At what hour was that made?

A. At thirty minutes past ten. When I say it was made, I mean it was repeated on board the *Arethusa*.

Q. The next?

A. The next was a red flag at the fore-top-mast-head.

Q. What

Q. What was the signal?
 A. A signal to engage.
 Q. The time?
 A. Five minutes after eleven.
 Q. Does the time of the signals being hauled down stand in your book against the signals?
 A. They stand upon the minutes as they are entered in this minute-book.

Court. When was the signal to engage hauled down?

A. Twenty-six minutes after one.

Q. After the signal was made for battle, what was the next signal?

A. A blue pendant at the ensign-staff.

Q. What time was that?

A. Two minutes after one.

Q. What signal was that?

A. A signal for wearing.

Q. What was the next signal?

A. A blue and white-striped flag, at the mizen top-mast head.

Q. What signal was that?

A. It is a signal to speak with a particular ship, to come within hail.

Court. For a ship or ships?

A. I have no notes of that sort against my minutes.

Q. At what time?

A. Fifty minutes past one.

Q. What ship's signal was it?

A. It was a yellow pendant, at the main top-mast head, which is the *Proserpine's* signal.

Q. What was the next signal made?

A. A Union and a blue flag, with a red cross at the mizen peak.

Q. At what time was that?

A. Forty minutes after one.

Court. He has mistook a signal, I believe.

Prosecutor. Did the signal for the *Proserpine* stand in your minutes the notes you made at fifty minutes past one; does it stand in your minutes before the next signal you spoke of?

A. Not in the original minutes.

Q. Does it here?

A. It does in this—I observed before it was only to refresh my memory.

Prosecutor. Then we are to understand the Union flag, with the blue, was made prior to the yellow pendant.

A. Yes.

Q. When was it that the Union and blue flag with a red cross under it, was hauled down?

A. At 23 minutes past three.

Q. When was it again hoisted?

A. At 30 minutes past three.

Q. When was it again hauled down?

A. On board the *Victory* I don't know; on board the *Arethusa* at day-light the next morning.

Q. What was the next signal after the Union and blue flag with a red cross, after being first hoisted the first pendant?

A. A blue pendant at the ensign staff.

Q. At what time?

A. Thirty minutes past two.

Q. What was the next signal to that?

A. A yellow pendant at the main top mast head.

Q. Are you speaking from your memory, or your minutes?

A. From my minutes.

Q. At what hour?

A. I have not expressed the time against the pendants, nor did I copy it from the original minutes.

Prosecutor. The flag and pendant are both the same signal.

A. The pendants follow in their regular order

as in the minute-book, but the time does not follow in the copy against those pendants.

Q. What was the next signal in order?

A. A blue flag at the mizen-peak.

Q. What signal was that?

A. A signal for ships to windward to get into the Admiral's wake.

Q. At what time was that?

A. At 24 minutes past three.

Q. When was that hauled down?

A. At 30 minutes past three.

Court. When was that hoisted again?

A. It was hoisted at 13 minutes past six.

Q. When hauled down again?

A. At day dawn the next morning.

Q. What was the next in order?

A. A Union and blue with a red cross at the mizen-peak.

Q. What for?

A. For ships to form a line a-head a cable's length a-funder.

Q. What the next signal in order, after 24 minutes past three?

A. A yellow pendant at the main top-mast head.

Q. Any time to that?

A. There are times to none.

Q. What ship was that for?

A. The *Proserpine*.

Q. What the next; that was another for her?

A. The third time.

Q. What the next signal?

A. A blue and white striped flag at the main top-mast head; the time of this was 33 minutes after four; it is for a particular ship to make more sail.

Q. What ship's pendant was out then?

A. A red pendant; but I have a signal in between; here is another signal made instantly upon it, a Spanish flag at the main top-mast head; the blue and the blue and white flag was hauled down directly, within a minute or two.

Q. Was any ship's signal out at that time?

A. I believe not.

Q. Does it appear the Duke's signal was made with that flag?

A. I had several pendants out, at the time the Spanish flag was out; it was hoisted at 37 minutes past four; but none while the blue and white flag was at the main top-mast head.

President. Do you recollect what ship's pendants were flying with the Spanish flag?

A. I don't immediately know what ships the pendants were made for, but I can inform you what pendants were out.

Prosecutor. Do you recollect the colour of the pendants?

A. I can.

Q. And the order in which they were made?

A. Not the times of the pendants; I have several times before said so.

Q. Nor the distance of times between them?

A. Nor the distance of times between them.

Q. At what time was the Spanish flag hoisted?

A. At 37 minutes past four.

Q. What was the first pendant let fly after that?

A. A red pendant at the mizen top-mast head.

Q. Was that immediately upon the Spanish flag being hoisted?

A. I don't know; I cannot recollect; they were flying together; they must fly together, as that flag was not hauled down 'till dark.

Q. What was the next pendant?

A. A blue at the starboard mizen top sail yard-arm.

Q. Does his minutes mark the ships those pendants were for?

A. They

A. They do not.

Q. In the original minute-book was it so marked, as to names and times?

A. There was a column for it, but I don't believe the significations were ever inserted.

Q. Go on and name the pendants, as you cannot name ships or times; only name the pendants in the order thrown out.

A. A blue pendant at the starboard mizen top-fail yard-arm; the next was a yellow pendant at the starboard main top-fail yard-arm, that is all the pendants I have down.

Q. Are the three pendants, you have mentioned, all that were in the original minute book?

A. There are two signals intervene between them, and a number of other pendants were let fly when the Spanish flag was at the main top-mast head.

Q. Were those other pendants, you mentioned, and the ships names they belong to, with the times, particularised in the original minute-book?

A. The times were, but whether the significations were or not, I have already observed, I do not recollect.

Q. Does Mr. Graham mean to say then, that the pendants and the times are without the names of the ships?

A. I do.

Q. I understand Mr. Graham had omitted the times in his last copy, but that he had entered the order in which each was made; I should be glad to know the reason why he has omitted both the pendants and ships names, made with that signal, with the Spanish flag?

A. I have not omitted the pendants; I said before that two signals intervened between the last three pendants I mentioned, and the several others that were let fly while the Spanish flag was flying at the main top-mast head.

President. What were those two flags that intervened?

A. A blue flag, which was hoisted at the ensign staff, by mistake; it remained there but three minutes, and then was hoisted at the mizen-peak, under the signal for the line; I do not mean this mistake happened on board the Victory.

Prosecutor. At what time was that signal made?

A. It was hoisted, by mistake, at the ensign staff, 10 minutes after six, and at the mizen-peak 13 minutes after six.

President. Are those the two signals you mean?

A. Those are the two I meant, the signals that were hoisted at the mizen-peak.

Prosecutor. You said, there were a number of pendants after that thrown out?

A. Yes.

Q. Can you name those pendants?

A. I can.

Q. Please to name them.

A. They are, a red pendant at the larboard main top-fail yard-arm, a blue pendant at the same place, a blue pendant at the larboard fore-yard arm, a white pendant at the larboard mizen top-fail yard-arm, a white pendant at the fore-top-mast head; a blue pendant at the starboard main top-fail yard-arm, a red pendant at the same place, a blue pendant at the main top-mast head; those are all the signals I have.

Q. Do you make any distinction in point of time of those pendants?

A. None at all; I cannot.

The Admiral. I should wish to know, whether the Vice-Admiral has done with this witness.

Prosecutor. Yes; the first copy is expected to be produced to-morrow.

The Admiral. Then I mean to say, so far as he has gone I shall ask him no questions at all.

Prosecutor. I expect the Court will take the trouble of having this copy and that examined.

Court. No doubt.

[The Court were then adjourned to the next day.]

The Ninth Day's Proceedings, Jan. 16, 1779.

Mr. Graham called in and further examined.

President. Have you brought the first copy with you from the original minute book?

A. I have.

Q. When was that taken?

A. The morning after the 27th of July.

Prosecutor. That minute book he now produces may be examined with the one he spoke of yesterday, to see if there is any difference between them in point of times and signals.

Admiral Montagu. Is there any alteration in the book in his hand from the day it was first wrote down; we have nothing to do with the other, we come to the first copy, and drop the other as nothing at all; I think he told you before there was a difference.

Prosecutor. Let the Judge Advocate look at the book he spoke from yesterday.

Judge Advocate. Capt. Duncan has the copy that was left in court yesterday.

Prosecutor. Examine the former book with this he has now.

Mr. Graham. I observed yesterday there was a small difference—I had my recollection so far about me, I recollected that small difference, and I have not given my evidence exactly as it stood in that book, but as it stood in this book, and this is the original copy I took from the minute book. It is a particular signal—that signal for engaging I have so frequently repeated it among my acquaintance I remember it, though I made a mistake in copying it in a hurry; it was done the morning we were on board the Britannia; I did not know I should be called upon immediately; I gave my evidence yesterday of the time; I was certain of the hauling down that signal, and not from the mistake in that book; I did not receive the summons from Admiral Keppel till the morning the signal was made on board the Britannia; I had scarce time to write out the copy as done in this memorandum book, before the signal was made on board the Britannia, and put it in my pocket without having time to examine it; when I came along the street, I found out I had made it forty-six minutes past one, when it is twenty-six minutes here; I had so frequently repeated it amongst my acquaintance as a particular signal, I could not mistake.

Court. You answered it from the original?

A. From this book, not that I had yesterday. There is one other thing I have to mention, which is all; it is no mistake neither; I have put down a pendant, but not where it was hoisted, but I recollected having taken notice of it before where it was hoisted in this book, and I gave my evidence right of that.

Prosecutor. What I wished for was the first copy that was taken to have it explained what variations there might be between that and this.

President. Is there any other difference between the two books you mentioned?

A. No. I spoke of that so far as I knew it agreed with this, and where I knew it disagreed I spoke from my recollection of this.

Prosecutor. If the Court will take one and look at it, they can see if any times are noted in that of yesterday different from what he produces to day, or any ship's signals made.

Mr. Graham

Mr. Graham. There is none at all; in every other particular, but what I mentioned now, it is a fair copy.

Q. Any erasements?

A. No.

Judge Advocate. This is a memorandum book nobody can understand but himself; it is a slate, and some parts of it so very obscure, I think it is hardly possible for any body to make use of it but himself.

Prosecutor. What is the name of the mate he mentioned yesterday that took the copy from the original minute book you mentioned in your examination yesterday?

A. Mr. Cawsey.

Q. You do not know his christian name?

A. No.

Prosecutor. I desire the Judge Advocate may summon Mr. Cawsey, the mate of the *Arethusa*.

Court. Order him to be summoned.

President. You will order him to appear here, and bring the ship's log book; send that order, and then he will give a reason why he does not bring it.

Admiral Montagu. The ship's log book, it seems, is lost, as Capt. Marshal said.

President. Order him to bring the ship's log book.

The Admiral. I will ask Mr. Graham one question whether I have seen him or his minute books, or spoke to him any thing about either of them?

A. Neither of them.

JOHN CARTER ALLEN, *Captain of the Egmont, sworn.*

Q. When did you first see the French fleet?

A. Upon my word I cannot justly say when I saw them; the log book and journal are left behind me at Plymouth, I must refer you to them.

Q. Upon the day you did see them, do you remember what time of the day it was when you first saw them?

A. About two o'clock, between two and three, I will not be positive as to the time.

Q. During the afternoon, and the evening, did they appear to be employed in forming their line of battle?

A. No.

Q. How were they situated with respect to the British fleet then?

A. I do not recollect, Sir, it is a long time since, I have not charged my memory with any thing of that sort, I do assure you.

Q. Do you remember the situation of them the following morning?

A. No, I do not.

Q. Do you remember when you first saw them on the morning of the 27th?

A. I do.

Q. At what time, Sir?

A. Near five o'clock.

Q. When did you first discover them to be in a line of battle?

A. Not at all.

Q. Upon what tack were they when you first saw them?

A. Upon the larboard tack.

Q. About what time was that?

A. Between five and six.

Q. Did they appear to you at any time to be in a line of battle?

A. Never at all.

Q. At that time, that is the morning of the 27th, what was the situation of our fleet with respect to them?

A. I cannot positively answer to that, the *Egmont* was so far to leeward, I cannot say I could distinguish the situation of the rest of the ships to windward.

Q. Do you remember the Admiral's making a signal for some ships of the Vice of the Blue's division to chase to windward?

A. I do.

Q. At what time?

A. Nearly six o'clock.

Q. For how many ships of that division?

A. I do not know.

Q. Do you know the names of any of the ships?

A. The *Egmont* particularly.

Q. Can you name any of the others?

A. The *Terrible*, I do not recollect any more.

Q. Where were several pendants out, or only those two?

A. I do not recollect any more than those two.

Q. Did not a number of ships make sail and chase at that time, of that division, in consequence of that signal?

A. There might be three or four, I believe.

Q. Did those ships, whatever their numbers were, by chasing separate and scatter that part of the fleet more than they were before?

A. They made a greater distance, no doubt, but they were not scattered.

Q. Did they all preserve an equal distance from each other while you was chasing?

A. No, they did not.

Q. When did the French fleet tack from the larboard tack to come to the starboard tack?

A. I cannot ascertain the time.

President. At the time that your signal was thrown out to chase to windward, what judgment did you form to yourself at that time of the cause of that being thrown out?

A. To get to windward, and close with the Admiral.

Q. When the French fleet tacked, did they tack together or successively in each other's wakes?

A. It is out of my power to tell.

Q. At what time did the British fleet tack altogether by signal?

A. The signal was made to tack at ten, but I had tacked before, so we did not all tack together.

Q. At what time was the signal made for battle?

A. I saw it at a quarter after eleven.

Q. What part of the French line did you begin to engage?

A. I engaged the third ship, but they were not in a line.

Q. Were you at that time accompanied by any other ships of your division, so near each other as to support each other?

A. I was so attentive to my own ship, that I do not recollect any other than the *Terrible* about a mile from me.

Q. Was that a mile a-head or a-stern of you?

A. A-stern of me.

Q. How near was the ship next a-head to you?

A. I do not recollect any other ship being near me but the French men of war, there being so much smoke.

Q. In that part of the engagement did you receive considerable damage from the enemy?

A. I cannot say that I recollect we received any damage, we were not considering damages, we were too attentive in firing upon the enemy.

Q. Do you not think the damages you received in that part of the engagement were greater than they probably would have been, if you had fought in a body with the rest of the ships of the Vice of the Blue's division?

A. No.

Q. If you had engaged in a body with the other ships, would not they have shared in the fire from the enemy, which was wholly levelled at you when you were alone?

A. That is as the enemy pleased, they might fire at me only, or they might not have fired at me at all.

Q. From the place where you began to engage, did you proceed till you joined some other part of

the British fleet, and was that the division you belonged to, the Vice of the Blue's division, or the Admiral's division?

A. I did proceed, and joined the Admiral's division.

Q. In doing so, did not you pass a-head of the Admiral of your own division?

A. No.

Q. Did you pass a-stern of him?

A. I did not pass a-stern.

Q. In what situation was the Vice of the Blue from you when you joined the Admiral's division?

A. He was a-stern on the lee quarter.

Q. Was he in that situation from you when you first began to engage?

A. No.

Q. How then?

A. Upon the lee beam, about three miles and a half, or four, perhaps, to the best of my knowledge.

Q. When you joined the Admiral's own division, did you continue to engage there?

A. I did.

Q. Did the confusion that that part of the fleet was in?

The Admiral. He has not said they were in confusion.

Prosecutor. Then did the situation?

Captain Allen. No, Sir, the confusion (if you will give me leave to answer that first.)

Q. Occasion some of your own ships to fire into your ship?

A. I saw no confusion at all.

Q. Was you fired into by any of our ships?

A. I was.

Q. By what ships?

A. The Thunderer.

Q. What damages did you receive by her shot?

A. The sheet anchor was broke, two cutter boats were shot through, some other shot in the ship's side, but neither men killed nor wounded.

Q. Was not your main-mast wounded, shot upon the larboard side?

A. Not that I recollect.

Q. Was it not understood at the time that a man was killed upon the quarter deck from the Thunderer's fire?

A. No, it was proved he was killed by the French three deck ship that lay along side of us. It was no fault of Captain Walsingham's.

Admiral Montagu. We are not trying Captain Walsingham, but trying Admiral Keppel; an accident often happens in battle.

Q. Did any other of our ships fire over you, or into you on that day?

A. No.

Q. While the Thunderer and you lay in that position, did not the enemy's shot go over both or hit both?

A. I cannot say that; I cannot say whether they went over, they went through us and into us.

Q. Were they within distance for the shot to reach both?

A. Within pistol shot.

Q. Was you at this time a-head or a-stern of the Victory?

A. A-stern of the Victory.

Q. Did you proceed in that situation from her till you passed the rear of the French fleet?

A. I did.

Q. How far do you think the British fleet was extended from van to rear at the beginning of the engagement?

A. I do not know.

Q. Was not the Victory, while she was in action, supported by the whole of the Admiral's own division, and part of the Vice of the Blue's?

A. I cannot tell that, there were many ships engaged.

Q. Can you tell by what ships the Formidable was supported during the engagement?

A. I cannot particularize; there were three ships a-stern of me (the Egmont) among which ships was the Vice Admiral of the Blue.

Q. After the Admiral, with the ships of his division, and the others with him had passed the rear of the enemy, did he wear and stand towards them?

A. He did.

Q. Within what distance from the sternmost of the enemy's ships did he wear?

A. I cannot ascertain the distance, it was not far.

Q. How long was it after he had passed the rearmost ship?

A. That I do not know.

Q. Did you continue to stand beyond them longer than the admiral did, or the same time?

A. I continued on the starboard tack till six o'clock in the afternoon, having four foot water in the hold, which obliged me to continue on that tack.

Q. From the very brisk fire kept up by our ships that were engaged, do you think that the French ships must not have been damaged at least as much as ours?

A. I can answer to no ships firing but my own, neither can I for what damage the French may have received.

Q. Have you any reason to think that the damage must not be in proportion to what our fleet received?

A. That I cannot say.

Q. Have you any reason to suppose they must have been damaged?

A. I have reason to suppose they must have been damaged, no doubt.

Q. After you had ceased firing, did you take notice of the Vice of the Blue?

A. Not till six o'clock in the evening, the same evening.

Q. Did you see the Victory when she wore?

A. I have already said I did see the Victory wear.

Q. Did you see the Vice Admiral of the Blue at that time?

A. No.

Q. When was the signal for battle haul'd down?

A. I cannot immediately say.

Q. Can you say whether it was before or after the Admiral wore?

A. I cannot.

Q. Did you observe the Admiral unbend his main-top sail while standing towards the enemy?

The Admiral. That has been admitted over and over again; if you will fix the exact time I will tell you whether I agree to it or not, and it will save the Court a great deal of trouble.

Prosecutor. While standing towards the enemy?

The Admiral. Yes, and then bent it in half an hour again.

Prosecutor. Where was the Vice Admiral of the Red and his division about that time, when the Victory was standing towards the enemy?

A. I was so attentive to repairing my own damages that I cannot immediately say.

Q. Did you see the Victory wear the second time?

A. By the same rule I did not.

Q. When did you first see him with his head to the Southward?

A. Between four and five o'clock.

Q. Was there a number of ships about him at that time?

A. There was.

Q. Did you take notice whether the French fleet broke up their line?

The Admiral. He has not admitted of any line.

A. I did not perceive them in any line, as I said before.

A. I did

Q. Whether did you perceive them, or did you observe them to be in a crowd different from what they had been during the action?

A. Them?

Q. Them; the French fleet?

A. I did not see them in a crowd before the action, nor after the action; I did not see them in a crowd at any time.

Q. Did you observe when they began to form a line of battle with their head to the Southward?

A. I did not.

Q. Was not the Vice of the Blue and part of his division the ships that last came out of the engagement?

A. I cannot tell.

The Admiral. I will answer that for Captain Allen if he pleases; I do admit it to save all questions of that sort—the Vice of the Blue and his division did come last out of the action.

Prosecutor. When the Victory wore the second time, did she stand to the Southward?

A. I did not see the Victory wear the second time.

Q. She had wore when you saw her?

A. When I saw her she was standing to the Southward between four and five o'clock.

Q. Was the French fleet then a-stern?

A. No, they were not.

Q. Where were they?

A. They appeared to me the greatest part of them a-breast of the Admiral, to leeward.

Q. At what time of the day is Captain Allen speaking of?

A. About six o'clock in the evening.

Q. Did you observe what sail the Victory had during the afternoon?

A. I was in such a position as not to be able to judge.

Q. Did you see the Blue flag at the mizen peak hoisted on board the Victory that afternoon?

A. I did.

Q. About what time?

A. About five o'clock I think, I cannot be particular; as near that time as I can recollect.

Q. Was your ship then to leeward or to windward of the Victory?

A. A-head and to leeward withal.

Q. At the time you mentioned when you saw the French fleet about six o'clock, were they forming a line of battle?

A. They appeared to me to be formed.

Q. Did the Vice Admiral of the Red bear down into the Admiral's wake that afternoon?

A. I did not see him bear down; but he was, or appeared to me to be a head of the Admiral.

Q. Before that did you take notice of his being a-stern of the Admiral in his wake.

A. I did not.

Q. At what time that evening did you get to windward of the Victory?

A. I tack'd at six o'clock nearest, and was to windward of the Admiral a little before seven.

Q. Did you observe that evening a number of ships pendants out to bear down and your's amongst, them on board the Victory and on board the Formidable?

A. I did.

Q. Where was your ship at that time with respect to the Formidable?

A. To windward.

Q. At what time was that?

A. Near seven o'clock.

Q. Did you observe the Fox frigate come to the Formidable?

A. I did not.

Q. After you had made sail in consequence of that signal, and your pendant being haul'd in, did you again bring to?

A. I did; for we had much water in the hold, at that time going too fast for the people that were over board to stop the leaks.

Q. Did you observe any signal made in the night, or were you informed of it at the time?

A. I saw some rockets hove, which I apprehended were from some of the French ships.

Q. Did you perceive them from that time to go away?

A. No, I did not.

Q. Were they or part of them in sight the next morning?

A. I saw three sail between three and four o'clock in the morning of the 28th.

Q. Was you informed Sir, of any more ships seen from your mast head that morning, supposed to be of the French fleet?

A. I neither was informed nor did see any more than three sail.

Q. What did you suppose those three sail to be, line of battle ships or frigates?

A. I judg'd two to be line of battle ships and one frigate, but in that I might be mistaken.

Q. How far do you think those ships were from the British fleet?

A. They might be six mile.

Q. Do you speak of them all at that distance, or the farthest of them only?

A. The nearest of them.

Q. Do you mean at day light when you first saw them?

A. I do.

Q. Whereabouts was the Egmont at that time in respect of the rest of the British fleet?

A. About four miles a-stern of the Vice Admiral of the Blue.

Q. And were not those French ships nearer to part of the British fleet than they were to the Egmont?

A. I think they were.

Q. When you was four mile a-stern of the Formidable, was you to windward or leeward of the wake of the Admiral (the Victory) and the rest of the fleet?

A. It appeared to me the Egmont was rather to windward.

Q. Were those three French ships to leeward of the British fleet?

A. To leeward.

Q. Did the Admiral lay the fleet with their heads to the northward the next morning, the 28th?

A. Yes.

Q. What latitude was your ship in at noon on the 28th. by the reckoning?

A. That the log book and journal will certify.

Q. Did the master give you his day's work in the log book here?

A. The log book is not here, they having countermanded the master, and the lieutenant being countermanded, they sent me neither journal nor log.

Q. Did the master give you his day's work every day, and have it you with you?

A. He did, but I have it not.

Q. Do you remember what it was?

A. I do not.

Q. Do you remember by the master's reckoning, what distance Ushant was that day?

A. No by the same rule.

Q. What kind of weather was it that morning?

A. As near as I can recollect it was hazy,

Q. What kind of weather as to wind?

A. It blew fresh.

Prosecutor. I have no more questions to ask him.

Cross Examination.

The Admiral. Captain Allen at the time the signal was made for the Egmont and other ships of the Blue division to chase to windward, in the morning of the 27th. do you recollect what sail the Vice Admiral of the Blue was under?

A. As near as I can, top sails and fore sail, and the fore top mast stay sail, the position the Egmont was in being a-head; I cannot recollect seeing whether

ther she had her main sail and main top mast stay fail or not.

Q. Captain Allen, as you are an officer of experience, I ask you when a signal is made for your ship, or a ship to chase to windward, does it direct you to stand five hours upon the same tack you set off from, or to tack and fly to windward in the wind's eye?

A. No Sir, it does not, but to fly to windward.

Q. If the other ships had tacked as you did, would they not have got to action as soon as you did and given support or succour; or whether their standing so much longer was not the reason of it, if they were extended and scattered, or was it the fault of the signal to chase to windward?

A. There is no doubt had the ships tack'd as I did, they might have been in action as soon as the Egmont.—It was not the fault of the signal to chase to windward.

Q. Then I would ask Captain Allen, if they had got into action as soon, or nearly as soon, (for one must get into action first) and had bore down and closed with the center division as the Egmont did, whether that would not have given strength to the center division and strength to the division a-stern of her?

A. Undoubtedly it must.

Q. I think Captain Allen has described himself to have seen at the time he was in action, joined with the ships of the center, that the Vice Admiral of the Blue and two others of his division was a-stern of the Egmont.—In the situation that the Egmont was then engaged, did not that give succour to the Vice Admiral of the Blue, and did not that give strength likewise to the Vice Admiral of the Blue?

A. It did.

Q. Some stress has been laid upon the Thunderer's firing through, or over, or some how hitting the Egmont; I would ask Captain Allen, if in so large a number of ships following one another, he imagines that an action will happen without that happening in some one part of the fleet so engaged and so obscured from one another by smoke?

A. It often happens in great fleets unavoidably.

Q. Captain Allen has said he stood upon the starboard tack with the Egmont till six o'clock, in repairing his damages; he has described seeing the Victory upon the starboard tack, between four and five I think—then I am going to ask a question of between four and five. Whether he observed the Victory leading two or three points from the wind, down upon the ships to leeward?

A. I did observe it, and judg'd it was to succour the crippled ships then laying repairing their damages a-head of the British fleet.

Q. A-head and to leeward?

A. A-head and to leeward.

Q. Then I would ask Captain Allen, if the Victory, standing two or three points from the wind was nearing the enemy's fleet or going from it?

A. It was nearing the enemy's fleet, and they appeared to me to edge away also.

Q. Does Captain Allen know between four and five, what number of the British fleet were to leeward down upon the lee bow of the Victory, where he was, or somewhere near about the Egmont in the situation he was in?

A. There was four sail besides the Egmont to leeward.

Q. When Captain Allen joined the Vice Admiral of the Blue about seven o'clock, did he then see the signal on board the Victory for the line of battle a-head and the blue flag under it?

A. I did.

Q. Had you ever seen it before in the course of the afternoon?

A. I had.

Q. When you was to windward at seven o'clock of the Vice Admiral of the Blue, did you observe him with the same signals out that the Victory had?

A. I only saw the signal for bearing down in the Vice Admiral's wake with my signal.

Q. I would ask Captain Allen, whether the condition his ship was in after the action, and upon the 28th. in the morning—was such as to permit him to chase like a man of war, and whether his ship, in the condition it was, could be entangled upon a lee-shore on an enemy's coast, without eminent danger?

A. She was not in a condition to chase, much less to be entangled on a lee-shore upon an enemy's coast.

Admiral Montague. You will please to acquaint the Court the defects of the Egmont after the action of the 27th. as to her masts, yards, sails, rigging and hull?

A. I must beg leave to refer you to the defects given in to the Commander in Chief, the morning after the action.

A. They are too many and too long to trouble the Court with now; the worst of them I will give an account of as near as I can. We received six shot between the lower part of the wale, on the starboard side, and five streaks below that; the head of the main-mast had two or three shot through; the mizen-yard shot totally away; the head of the mizen-mast had two shot; the cross jack-yard and mizen top sail yard shot away; the main-yard, the starboard yard-arm shot off; one shot through the flings of the main-yard, one shot through the larboard-quarter of the main-yard, and the most of the larboard yard-arm shattered, the head of the fore-top-mast shot off, the fore-yard shot through in two places, fore and main top-sail-yard shot through, the foremast one shot through the center of the fore mast, the head of the foremast much shattered, the main-stay shot through in the middle.

Court. I am very well satisfied with the incapacity of your ship, if you please to leave off there.

Q. How long after you was engaged was it before your ship was in a proper condition to have renewed the fight, supposing the Admiral had thought proper so to have done, how many hours?

A. Three hours and a half.

Q. Then Sir, was it not more proper and prudent in the Admiral to lay to and repair his disabled ships, before he attempted a second attack?

A. Assuredly.

Q. Then Sir, upon the whole, did it appear to you, as an old experienced officer, That Admiral Keppel, by his conduct, either the 27th. or 28th. of July, tarnished the honour of the British navy?

A. No, and I should not pretend to say thus much if I had not been forty years at sea, and three and thirty years an officer; That I look upon it, the Admiral did much honor to, instead of tarnishing the British flag.

The Court adjourned, till Monday Morning.

The Tenth Day's Proceedings, January 18, 1779.

The Court met, and adjourned to the next Day, on account of one of the members being indisposed.

The Eleventh Day's Proceedings, January 19th, 1779.

WILLIAM CAWSAY, *Mate of the ARETHUSA sworn.*

Prosecutor. In what capacity was you on board the Arethusa?

A. Master's Mate.

Q. Was you so on the 27th and 28th of July last?

A. Yes, Sir, I was.

Q. Have you brought the ship's log book?

A. Yes,

A. Yes, Sir.

The Court directed he should be sworn to the truth of the log-book; but afterwards said they thought it unnecessary, as he was then to answer upon oath.

Cowfay. I never made any erasement in the book.

Q. Has any been made?

A. I do not know.

Q. Did you enter the Days Works on the 27th and 28th, in that log-book?

A. I did.

Q. Are those signals precisely the same?

A. The same as entered.

Q. What time did you make those entries on those days?

A. Sometime in the evening; I either wrote them upon my own log, or from this book I took from the log-board; sometimes I wrote them upon my own log first, and sometimes upon this; I believe I took those two days upon the log-board.

Q. Was there a minute book copy of the signals?

A. There was.

Q. Did you take a copy of that minute book on those days?

A. Yes.

Q. Did you enter the signals of that minute book into the log-book?

A. I did not Sir, I had not room to enter them.

Q. Did you usually enter signals from the minute-book into the log-book?

A. I did, Sir.

Q. Did you enter them upon no other days, except those two days?

A. I did Sir, it will appear by the book?

Q. What was the particular reasons for not entering them upon those two days in the log-book, when it was usual to do it upon all other days?

A. The reason was, there was not room, and they took up so much time, and we were all in hurry and confusion.

Q. Was not there room on the following leaves, were all the next leaves in the book blank at that time?

A. Yes, Sir, there was; but Captain Marshall intended to keep a minute-book, and the Master told me it was not material.

Q. You understand you was in a manner forbid doing that as not necessary, because the Captain meant to keep a separate account?

A. No, I did not understand I was forbid.

Q. Where is the original minute book of that day?

A. It was lost.

A paper shewn him.

(The President then informed the Court, it was put yesterday into his hands; it was brought him yesterday by the Captain of the *Arethusa*).

Q. Do you know this?

A. Yes; the signal minute-book was taken in pencil, this paper was copied from it.

Q. In whose care was that minute-book usually kept before it was lost?

A. It remained in the binnacle-drawer upon the quarter-deck, day after day.

Q. How long was it after that day that the minute-book was lost?

A. I believe it was eight or ten days: I cannot be exactly certain when it was missed.

Q. Where is the first copy you took of those two days works, when you took a copy yourself in the evening?

A. This is the first copy that I took from the book that was kept upon the quarter-deck, which was in pencil.

Q. Have you had that in your custody ever since?

A. No.

Q. What did you do with it?

A. When the book was missed, Captain Marshall applied to me, and I delivered it to him.

Q. Have you examined it lately, to see whether it is precisely the same, or whether it has any alterations in it?

A. I think it the same, I have a copy of it that was taken afterwards.

Q. Have you ever made any additions or alterations in that since the first evening?

A. I have not, Sir.

Q. Have you ever made any alterations or additions in it, since the copy was made from the first entry?

A. No, I have not.

Court. The minutes in your original book was in pencil, and this you took from that?

A. Yes, I have a copy I took of it before I gave it to Captain Marshall.

The Court desired him to read it himself.

At 5 min. after eleven A. M. flag red, fore-top-gallant mast head.

Hauled down at 26 min. after one.

Two min. after one, pendant blue over the ensign, at the ensign staff.

Hauled down 8 min. after one.

Forty min. after one, flag union and blue, with a red cross mizen-peak, a union upwards.

Hauled down 23 min. after three.

Fifty min. after one, flag striped blue and white main-top mast head.

Hauled down at two; at one 15 min. pendant yellow main-top mast head: Hauled down at two.

Fifty min. after two, pendant blue ensign staff, hauled down at three.

At three, pendant yellow main-top mast head, hauled down 15 min. after.

Twenty-four min. after three, flag blue mizen peak, hauled down at 30 min.

At 3 h. 30 min. flag union and blue, with a red cross at the mizen peak; no time mentioned when hauled down. Three h. 15 min. pendant yellow mizen top-mast head, hauled down 33 min. after four; pendant white 3 h. 50 min. mizen-top sail yard hauled down 32 min. after five; 33 min. after four, flag striped blue and white main-top mast head; hauled down at 24 min. past four; at 37 min. past four, flag Spanish ensign main-top gallant mast head, no time when hauled down; 56 min. past four, pendant red mizen top-mast head, hauled down 52 min. past five; 57 min. past four, pendant blue at the starboard mizen-top sail yard arm, no time of hauling down; 32 min. past five, pendant yellow main-top sail yard arm, hauled down 3 min. past six; ten min. past six, flag blue under the line at the ensign staff, hauled down in 3 min. only 3 min. hoisted; at 13 min. after six, an ensign hoisted, no time of hauling down mentioned; at 13 min. after six, a blue flag at the mizen peak, no time of hauling down; 36 min. after six, pendant red and blue larboard main-top sail yard arm, not hauled down; 36 min. past six, pendant blue larboard fore yard arm; 36 min. past six, ditto white larboard mizen-top-sail yard arm.

The Paper left in Court.

Captain ROBINSON of the WORCESTER sworn.

He begged the Court would permit him to look at some minutes which he had made himself, which he called a diary, that he kept constantly every day, but not from the log memorandums and transactions of the ship and fleet of the day before.

Q. When did you first discover the French fleet?

A. On Thursday the 23d of July.

Q. What time?

A. I believe it was about one o'clock, I cannot be certain exactly as to time.

Q

Q. During

Q. During that time in the afternoon and in the evening, did they appear to be forming a line of battle?

A. There was an appearance of it, but I cannot be certain.

Q. On which tack was the French fleet at dusk that evening?

A. I believe on the starboard tack, standing to the southward.

Q. Was that towards the British fleet, or from them?

A. Rather towards them.

Q. Were they at that time to leeward of the British fleet?

A. I think they were.

Q. About sun-set?

A. Yes.

Q. How was the Wind?

A. Westerly I think, or W. N. W. I am not certain as to the exact point of the compass.

Q. As you had discovered the French fleet to be to leeward of the British fleet, standing to the southward, were the British fleet standing between the French fleet, and the port of Brest?

A. Most certainly.

Q. Where were the French fleet the next morning?

A. I don't know exactly: In the N. W.

Q. Was not the British fleet then between the French fleet and the port of Brest?

A. Certainly.

Q. What do you apprehend to be the cause of the French fleet getting to the N. W. and placing the British fleet between them and Brest?

A. I apprehend, Sir, that it was owing to the wind's shifting, as well as the fleets laying to.

Q. Do you apprehend the French fleet carried fail in the night-time for that purpose?

A. I do not know.

Q. When they were in the N. W. the next morning, had not they got the weather gauge of the English fleet?

A. They had, Sir.

Q. Now I will come to the 27th: At what time did you first see the French fleet, in the morning of the 27th?

A. I did not myself see them till five o'clock.

Q. Did they appear to you to be in a line of battle, in the morning of the 27th?

A. They did, Sir, in a straggling line, but not a close one.

Q. At what time do you speak of?

A. About five o'clock in the morning.

Q. After the early part of the morning, did their line appear to you to be more perfected or more closed?

A. I did not observe it; immediately after I was engaged in making fail.

Q. In the morning of the 27th, was the British fleet scattered and dispersed?

A. They were not in a line of battle, but in the usual state of sailing.

Q. What occasioned your making fail?

A. The Worcester's signal was made on board the Admiral, for her to chase to windward, with several other ships at that time.

Q. What did you judge the Admiral meant, by making that signal?

A. Sir, my judgment was, as every effort had been made to bring the French fleet to action after the 23d, I judged the Admiral's intention was, that those signals for the ships were made to chase to windward, to endeavour to bring the French fleet to action.

Q. How many ships signals of the Vice of the Blue's division were made at that time?

A. I believe about that time there were six. I am not perfectly clear as to the number.

Q. Did that signal leave the Vice of the Blue with more than four ships of his division?

A. No.

Q. Did that signal cause the fleet to be more scattered and separated than they were before, in that part.

The Admiral. Captain Robinson has not said they were separated or scattered; he has not said scattered.

Prosecutor. Did that signal cause that part of the fleet to be separated and dispersed?

A. It certainly extended or enlarged the distance from the center and the chasing ships.

Q. Did it not also separate them from their own flag?

A. Certainly it did, Sir.

Q. Did the British fleet tack altogether by signal on the 27th to stand towards the French fleet, and at what hour?

A. At ten o'clock, or very near it, the Admiral made the general signal for the fleet to tack altogether, and the chasing ships complied with that signal as soon after as could be done.

Q. Before the signal was made for ships to chase, was the Vice Admiral of the Blue, and his division, a-head of the Admiral, and something under his lee-bow, or how were they situated?

A. The Vice Admiral, and his division, was a-head of the commander in chief, but a little upon his lee-bow.

Q. Were not the ships that chased in different situations, some a-head, and some a-stern; some to windward, and some to leeward, at the time the signal was made for them to chase?

A. I really cannot say, I can only answer for the situation of the Worcester, the ship I had the honour to command?

Q. When ships chase from different situations as before supposed, and who differ in their rate of sailing, can they all come into a proper situation at one and the same time for tacking?

A. No.

Q. Was it not the Admiral's practice to make the signal for ships chasing, to tack when he judged they ought to do so?

A. Generally so.

Q. Did he make any such signal that morning for the chasing ships?

A. Not that I could judge.

The Admiral. If it will save time, I admit I did not.

Q. Were not four of the ships that were sent out to chase, the whole of the Vice Admiral of the Blue's division, that were stationed in the line of battle, between the Vice Admiral, and the Admiral's own division?

A. I have not yet named, Sir, any ships that chased with me.

Q. Was not the Worcester one?

A. Yes.

Q. Was the Elizabeth one?

A. Yes.

Q. The Defiance one?

A. I believe she was.

Q. The Robust one?

A. She was.

Q. Did not that leave a wide space, by taking away those ships between the Formidable and the Admiral's own division?

A. It certainly extended the distance more than it had done before.

Captain Duncan. As you was in chase at that time, could you see the distance the Vice Admiral was from the Admiral?

A. What time do you allude to?

Q. An hour, or two hours, after you was in chase.

A. It is impossible to ascertain the distance.

Prosecutor. If those four ships had been permitted to take their stations instead of chasing, would not the two divisions of the fleet have been more connected

connected than they were after those ships were sent to chase, and were separated?

A. What two divisions do you mean, the center and rear?

Q. Yes, the center and Vite of the Blue?

A. Undoubtedly they would.

Q. Do you think ships proceeding along an enemy's line singly, are exposed to more or less damage from the enemy, than if a number of ships were proceeding closely connected together so as to support each other?

A. Undoubtedly, supposing the enemy's line to be compact and close.

Q. Did not the chasing ships, so far as you know, come into action separately, and at considerable distances from each other?

A. The four ships that chased together came into action separately, and at some considerable distance from one another.

Q. Was any ships near to you so as to be of support to each other?

A. I do not know what time you allude to. I was two hours in action, consequently nearer sometimes one ship than another.

Q. Did part of the chasing ships go a-head, and join the center division?

A. I really do not know, Sir.

Q. If the six ships had not been taken from the Vice Admiral of the Blue, and sent to chase, might not the Vice Admiral of the Blue, with his whole division, have gone into action in a connected body and have supported each other?

A. Yes, I should think so.

Q. Do you think if the Admiral had made the signal for forming a regular line, and chasing in that regular line, he would have brought the French fleet so soon to action?

A. No, by no means.

Q. Was it the van division of the British fleet, or the chasing ships in the rear division, that began the engagement?

A. About eleven o'clock, or thereabouts, in the morning, I observed the van division of the British fleet engaging with the enemy.

Q. Mr. Robinson has said, at different times, during the engagement, he was at different distances from different ships; at any time during the action were those ships so far asunder as not to be of support to each other?

A. I do not think any of the four chasing ships I could see within my view could support each other, or were near enough to be of support to each other.

Q. Was not there six ships in all that chased?

A. Four I declared before I was sure of, and believe there were two more, which was the *Defiance* and *Egmont*, but they were at a greater distance than the other four, and I am not so clear in the other two.

Q. Do you think the damages you received in the engagement, were probably greater than they would have been, if you had engaged in a body with the rest of your own division?

A. That depends greatly on circumstances, the enemy's situation, and the number of ships I was engaged with.

Q. Pray, Sir, was the enemy's line a close one when you engaged them?

A. No, Sir, far from it, they were much scattered.

Q. How far do you think the British fleet was extended, from van to rear, in the beginning of the engagement?

A. I look upon it to be very difficult to ascertain distances from ship to ship at sea, but I thought myself that was in the rear of the British fleet, full three leagues from the van of the rest of the British fleet.

The Admiral. Did you say full three leagues, or only two or three leagues?

A. Full three leagues from the sternmost ship.

Q. You say the French fleet were much scattered?

A. Yes.

Q. Then they were much extended?

A. I cannot tell any thing but from my own ship at the beginning of the action, about eleven o'clock.

Q. With what part of the French fleet did you begin the action?

A. I received the fire of the two headmost ships of the French van at about ten minutes after twelve o'clock at noon, for I had a very good observation before I began the action. I received their fire before I returned my shot, as I thought myself at too great a distance to do execution.

Q. With what part of them did you get into action?

A. I thought it was the third ship of the French van, it being close to me.

Q. Did any of the enemy's ships a-head of you bear down, as it appeared to you with intention to cut you off?

A. Several of them did bear down, but I did not know their motives. I thought they bore down to engage me close, which they did.

Q. Did any of them bear down a-stern of you, to rake you after they had passed?

A. As I observed before, several ships bore down to engage me, but one particularly bore down right before the wind, and came I believe within pistol shot under her top-sails, then starboarded her helm, let fall her fore-sail, stood under the *Worcester's* stern, and raked her fore and aft.

Q. At what distance was any of the nearest of our ships from you at that time?

A. I do not know what ships were near, but I believe the *Formidable* could not be a mile from me.

Q. Did you observe the *Formidable* when she went into action?

A. In intervals when the fire and smoke were clear of me, I saw the *Formidable*, but do not know when she first went into action.

Q. In the course of the engagement, Sir, what ships remained astern of the *Formidable*, from the time you first saw her engaged?

A. There were four sail astern of her; it was after two I fired the last broadside, but I cannot point out any particular time I saw her engaged.

Q. From the time you took notice of her being engaged, can you recollect what number of ships were astern of her, and how separated, whether at close or wide distances from each other?

A. At wide distances; I did not observe any of them close to my knowledge, I was so engaged with my own ship.

Q. Did you observe the *Formidable* go with her mizen-top-sail aback, to let those ships close with her, during the whole time she was engaged, or any part of the time you looked at her?

A. I did not see the mizen-top-sail of the *Formidable* aback, but I observed, that the *Worcester* came up with the *Formidable* faster than she had before, in different parts of the action; for sometimes I could not see at all, it was nothing but smoke; this was in the latter part of the action.

Q. At what time did you pass the sternmost ships of the enemy?

A. About five minutes after two o'clock in the afternoon, as near as I could judge; we had a very good observation, and I set my watch by the observation.

Q. When the Admiral with the van and center divisions and the ships with them, had passed the rear of the enemy, did they appear to wear, to tack, and double upon the enemy, and continue to engage?

A. I did not see them either wear or tack; I saw

saw the Red division making sail to windward, and standing to the northward towards the enemy; I thought they were to windward of us.

President. Did you judge the action would have been brought on that day, if the Admiral had waited for the fleet to have been more closely connected?

A. No, Sir, I don't believe it would, for I believe the French fleet used their utmost effort in the morning, to avoid coming to action at all; afterwards they edged away undoubtedly, as they had done before ever since from the 24th; they had endeavoured to avoid it ever since the 23d, and I thought if the wind had not shifted, they would have done the same and have availed themselves of it and not come to action at all.

Prosecutor. As you said the Formidable was a mile ahead of you and four ships astern of the Formidable, was you the sternmost ship of the British fleet?

A. There is two hours difference of time in that question; when astern of the Formidable, it was early in the action, the latter part of it a little before two or half after one, I was not more than a mile from the Formidable, it is blending them together.

Q. Did the Admiral, with the ships that had passed the rear of the French line with him, keep so near to the enemy after they had passed, as to be in immediate readiness to renew the engagement, when the Vice Admiral of the Blue came out of it, so as to countenance and support him at the time he continued to engage with the few ships with him?

A. I did not see the Commander in Chief immediately after, for they had done action before we had a considerable time.

Q. The first time after you ceased firing yourself, when did you see the Admiral and the rest of the fleet with him, were they then in a situation so near to the French ships, as to have renewed the engagement?

A. No, I did not observe them so near; I observed, as soon as the Worcester came out of action, that the signal for battle was hauled down; how long it had been I cannot say, and that Vice Admiral Sir Robert Harland and his division, (or a part of them; I cannot tell how many were to windward) had shortened sail, and I think brought too with a main-top-sail to the mast; it appeared so to me; I am not positive.

Court. At the time the French ship raked you, what tack was the French fleet upon?

A. As I observed before, the ship bore down right before the wind and gave me her broadside, then put his helm a-starboard to bring her head to the northward, and then edged away a little and raked me fore and aft, there was no tack.

Prosecutor. At the time he first mentioned, when he first took notice of the Admiral, after he came out of action, and observed the signal for battle hauled down, how far, according to the best of your recollection and judgment, was the Admiral then from the Worcester?

A. Admiral Keppel?

Q. Yes.

A. I cannot speak to the distance so soon as I came out of action; I brought to so soon as I could get her fore-sail up.

Q. After you came out of action, did you observe the Formidable's motion?

A. I did.

Q. Did you observe her to wear and lay her head down to the enemy immediately after she came out of action?

A. The first time I observed the Formidable, I thought she was laying to, but soon after I observed her wear and lay her head to the northward, towards the enemy.

Q. At what distance do you judge she was then from the sternmost of the enemy?

A. I cannot answer that question, the distance I cannot tell.

Q. While she was wearing, did you observe the sternmost of the French ships fire her stern chase at her?

A. I did not the first time of wearing.

Q. If the Admiral with the body of the fleet had tacked or wore, within the same distance of the rear of the enemy's fleet as the Formidable did wear, might not the French fleet have been immediately re-attacked with that part of the fleet; and Sir Robert Harland's division, which you have described to be then to windward?

A. Sir Robert Harland's division, or part of it were to windward; I could not discern the same of the Admiral's; I could not see them so plain; had they been as Sir Robert Harland's was, to windward, and had ships sufficient to attack the French, I cannot say, but I am very clear he might have done it; I saw the Vice Admiral to windward with part of his division, or the whole might be there, I could not see them plain.

Q. If the Admiral with the body of the fleet with him, had been so near to the French fleet as the Formidable was, might not the rear of the French fleet have been attacked?

A. When the Formidable wore, I apprehended she was upon a line with the French fleet, or part of them, consequently, if the Commander in Chief had been in a proper situation, in the same situation with the Formidable, and his ships in a proper condition to engage, he might then have brought the French fleet to action again; it is matter of opinion and conjecture only.

Q. From the very brisk fire kept up by our ships that day, have you any reason to suppose that the French ships were not damaged in proportion to the English?

A. If I were to judge of the French fleet by myself, they must have received considerable damage; I make no doubt they received damage, one ship I saw bear away before the wind, and a frigate before her, I cannot say they received no damage.

Admiral Montagu. As you passed from the van of the French fleet to the rear when you came out of action, did it appear to you the French fleet had received as much damage in their masts, yards and sails, as the English fleet had done?

A. As I could form no judgment of the damage sustained by the whole of the English fleet; I can form no judgment of comparison between the English and French fleet in general, but I observed the French fleet had sustained considerable damage as they passed me, most of them having been in action before they got to the Worcester, I mean as to their sails and rigging, shot holes in their sails and rigging.

Q. Except the ships that had bore away with her main-yard gone, and a frigate attending her, did you see any other of the French line that had lost their masts and yards?

A. I do not recollect.

Q. Was there any appearance of any other ships either English or French, being totally disabled by the loss of their masts, or any masts?

A. Upon my word I cannot recollect the carrying away any of the masts, neither the one nor the other. If you come to top-gallant masts, the Worcester had her top-gallant mast carried away, the mast was flying I don't know where.

Prosecutor. When the Formidable wore and lay her head towards the enemy, did you do so in the Worcester?

A. I did, that is the ship did.

Q. While the Formidable and your ship were with their heads towards the enemy, did you observe any of the French ships make sail towards them?

A. Yes,

A. Yes, several Sir.

Q. Was that the reason of your wearing again, and standing to the southward, towards the Admiral?

A. Yes.

Q. After you had wore and stood towards the Admiral, did he appear to you to be alone, or with a body of the fleet about him?

A. There were several ships that passed me before the Admiral came up I believe, I think so, I cannot be positive.

Q. Was the Worcester in a condition to renew the action after she wore the first time?

A. No, by no means.

Court. You say there were some ships passed by you towards the Admiral, how was you?

A. I was laying to.

Q. How did you observe the Admiral to be, the commander in chief?

A. When he passed me, I don't know the condition he was in, I was so intent to get my own ship in repair, I really had not time to look.

Court. Give an account of the damage your ship sustained?

A. I leave them to the Honourable Admiral, to whom I communicated them the next day.

Admiral Montagu. Relate what you know of the masts, yards, and sails, you need not go through the whole rigging?

A. In the first place my main-top-mast was shot through more than two-thirds through above six feet above the cap, several shot through and through the fore-mast and bow-sprit, one particularly in the bow-sprit just within the gammoning, with a two and forty pounder and several shot besides, the mizen-yard was shot through in several places, a great many shot through her sides and stern frame, most of the standing and running rigging shot to pieces, and all the sails, especially the main-top-sail, which was all blown into pendants, the stays and back-stays, both the main-stay, fore-stay and back-stay; in short the whole standing and running rigging in the ship, the greatest part of the standing and running tacks and sheets, braces and bowlings. I had not any thing left hardly, and the fore-mast, I believe whenever it is opened there will be found, two or three shot in it, which are now cased in, that we durst not open it; there is double headed shot cased in.

Q. Then Sir, in the condition you have represented the Worcester to be in after the action, supposing the Admiral had wore, could you have been in a condition to have assisted him, in case he had thought proper to re-attack the enemy; with your ship?

A. Not immediately, by no means.

Q. How long do you think it would be before you should be in a condition?

A. We were upwards of three hours and a half before we edged down into our station in the line of battle, consequently we could not be in a condition sooner.

Q. Did you observe when the Admiral wore again to stand to the southward?

A. I cannot be particular as to the time, but about four o'clock in the afternoon, I observed him making a signal for the line a-head, and standing to the southward.

Q. Did you observe the Victory and Formidable meet?

A. No, I did not Sir.

Q. Go back to the time, the Formidable and Worcester wore a second time, and laid their heads towards the Admiral, did you observe those French ships you mentioned were making sail towards the Worcester, then edge away to begin to form a new line of battle, steering somewhat to leeward of the British fleet?

A. Yes, I saw them undoubtedly edge away, and I thought they were forming into a line again to leeward of the British fleet.

Q. When the Worcester had wore and laid her head to the southward, were the body of the French fleet then near a-stern, or in what position with respect to her?

A. The body of the French fleet as near as I can recollect, was a-stern of the Worcester to leeward with all, and forming into a line of battle a-head, with their heads to the southward, with their star-board tacks on board, as it appeared to me.

Q. I think Captain Robinson has said his ship was not in a condition immediately to renew the attack, I would ask him, if in case he had come along side of a French ship that might be supposed to have received as much damage in the engagement as himself, was his loss of men so great, or number of his guns disabled, that he would not have engaged such ship?

A. Engaged her Sir?

Q. Aye?

A. If he had been complaisant enough to have come and laid along side of me, I would have engaged her so long as I had a barrel of powder on board, I had no guns dismounted.

Q. About what time was you in the Admiral's wake?

A. I was a-stern of the Admiral, and to leeward with all, I got into my station in the line about six o'clock in the evening, or rather before, I cannot speak to a few minutes.

Q. In what situation were you in the morning of the 28th, with respect to the Victory?

A. At day light in the morning do you mean?

Q. Yes, Sir.

A. I was pretty well in my station; I believe in the Vice Admiral of the Blue's division at day light. In the morning the Victory was a-head and to windward with all.

Q. Did you see any of the French ships that morning?

A. I saw three large ships which I took to be French.

Q. Whereabouts were they?

A. Upon the lee beam or rather abaft?

Q. At what distance were they or any part of them?

A. One I took to be a large ship, was not more than a mile and a half from the Worcester in appearance, and I took it to be, according to the best of my judgement, not more than a mile and a half, and the other two were about three or four miles.

Q. Did they appear to you to be nearer to any other part of the British fleet than to the Worcester?

A. I believe there were two ships a-stern and to leeward of the Worcester that were nearer than I was.

Q. Were those ships chased by the British fleet or any part of them?

A. I did not see them chased.

Q. Do you know if the rest of the French fleet was seen that morning?

A. From the Worcester there were no other ships seen at that time.

Q. Was the signal made for seeing them by any other ship in the fleet?

A. I did not see any signals made, but I observed on board the Victory two or three ships signals, as I apprehended for ships to chase; but I did not see the chasing flag.

Q. Was you informed by any of your officers of the signal having been made by some ship in the fleet, of the French fleet being in fight in the south-east?

A. Of none, but the three ships we saw from the

the Worcester. We did not see the body of the French fleet.

Q. Did those three ships crowd sail from us? And which way did they stand?

A. In the morning early, the dawn of the day, I saw them myself very plain; they had much the same sail set as we had; they kept the same course, but as soon as it became to be a clear day, when they made us to be the British fleet they bore away, and made all the sail they possibly could from us.

Q. Which way?

A. I cannot be certain to the point of the compass they steered, but it was E. S. E. I believe.

Q. Was it to southward?

A. S. or S. E. or E. S. E. I cannot be certain as to the point of the compass.

Q. In case the British fleet had chased those three ships, and suppose the French fleet to have been in the direction they steered, was there not a probability of our undamaged ships coming up with their disabled ships, and, in that case, might we not have taken them? Or if the rest of the French fleet had staid to defend them, might not another engagement have been brought on?

A. With respect to chasing, there is no doubt of it; but the undamaged ships might have chased the French ships in fight. As I saw nothing of the body of the French fleet, I can by no means be a judge of their situation, or what they would have done, as it depended wholly upon the distances we were then from Ushant or Brest; the port the three ships seemed to be steering for.

Admiral Montague. You say the French fleet were not seen from the mast-head of the Worcester. If Admiral Keppel had ordered the undamaged ships to chase the three ships that were running away, with all the sail they could set, do you think that the undamaged ships might not have been led into the mouth of the enemy before our disabled ships could have come up to their relief or assistance?

A. That depended wholly upon the distance between the body of the fleet and those chasing-ships, and likewise whether the chasing-ships went better than the ships chased; or they never could have come up with them.

Court. When did you last lose sight of the French fleet?

A. In the night I saw them very plain, between eight and nine o'clock, at the distance of about two miles to leeward of the fleet, as near as I could judge. And about ten o'clock at night, or soon after, the master and fourth lieutenant were then upon deck; the fourth lieutenant was left upon deck, and the master came and informed me, that they saw several rockets fired into the air from the French fleet about ten, and after that we saw nothing of their lights.

Q. On the 28th. at day-break in the morning, how was the wind when you discovered those three ships?

A. The wind was about W. N. W. with fresh gales, and hazy weather.

Q. Was then the Worcester under your command in condition to go down upon an enemy's lee-shore, having a port, perhaps, to leeward, and begin a general engagement?

A. The Worcester was in a condition to engage any ship at that time, but not to go upon a lee-shore by any means whatever: Not to chase, though she was as fit for action as any ship that ever swam.

Prosecutor. In case the fleet had chased nearly before the wind, could or could not the Worcester have carried all her sails to keep company with them on the next day, the 28th?

A. As the Worcester's main-mast was not injured much, I apprehend before the wind I could have

carried all her sails, having got my main-top-mast fished, and secured the night before.

Q. What latitude was the Worcester in at noon of the 27th?

A. At noon of the 27th. give me leave to refer to the account the master took down; he delivered me his day's works. I put them upon a file, I have his original delivered to me, which is thus.

The 27th. the Worcester in lat. 48. 32. N. by observation; Ushant East 40 leagues.

The latitude of Ushant about 48. I had a good observation that was at noon on the 27th.

Q. What was it at noon on the 28th.

A. 48 and 16 by observation. Ushant bore that day N. 80, distance 28 leagues, according to the master's account.

Q. In the middle of summer as that was, supposing a chace of thirty leagues, was the chance of moderate and fair weather, or having a gale of wind the most probable?

A. The wind and weather at that time was rather brisk, we had a fresh of wind and hazy blowing weather for some days; to be sure it was in the month of July, it was very extraordinary for the time of year, it blew fresh and was hazy for two or three days before.

Admiral Montague. During the course of your service, have you not frequently known in summer time very severe and hard gales of wind?

A. Undoubtedly; and I have been near forty years in the service, but I think at the same time we are not to expect such bad weather in the months of July and August.

Prosecutor. What sort of weather had you for three or four days afterwards?

A. The next day it was very indifferent weather, blowing fresh and hazy. I beg leave to refer to the log book. The 29th it was squally, with rain at times. The next day, Thursday the 30th, was moderate breezes, but cloudy and likely to rain. And Friday, the 31st, it was moderate and cloudy weather, with rain at some times, the wind westerly.

Prosecutor. It being the middle of summer and short nights, do you apprehend it would have been attended with any immediate or imminent danger, if our fleet had pursued that of France, at least so far as till we had seen them into port, or till we had made the land of Ushant?

A. That I apprehend depends upon the certainty of the distance, as we are frequently out in our reckoning.

Q. Independent of the reckoning my question stated till we had seen the fleet into port, or made the land of Ushant?

A. Had I been single, and in chace of an enemy, I certainly would have stood in till I made the land, or judged myself to be near it; but as to a fleet, it depended entirely upon the situation of that fleet; if the fleet had been in good order and condition I should not have hesitated about it.

Court. Are you acquainted with that part of the French coast near Ushant.

A. I am not so well acquainted as to run a risque without a master on board better acquainted than myself.

Q. Is Ushant in the bottom of a bay, or is it the extremity of a coast?

A. Ushant, I apprehend, is upon an island, Sir, and it is the extremity of the south west part of that island, as I apprehend, Sir.

Prosecutor. In the morning of the 28th, did the Admiral lay the fleet with their heads to the northward?

A. He did I believe, Sir.

Q. Before the fleet were laid with their heads to the northward, did you observe any signal made for ships to set up rigging?

A. No,

A. No, I did not, Sir, if I had I should have made a signal too.

Prosecutor. I have done with Captain Robinson.

Admiral Montague. Upon the whole did it appear to you as an old experienced officer, that Admiral Keppel, by his conduct upon the 27th or 28th of July, tarnished the honour of the British navy?

A. No, Sir. I have had the honour of knowing Admiral Keppel many years, I always looked upon him as an exceeding good officer, and innately a good man, and believe him to be so still, having no reason to think to the contrary.

(The Court adjourned to the next day.)

The Twelfth Day's Proceedings, January 20th. 1779.

Captain MARK ROBINSON cross-examined by the ADMIRAL.

Q. When you say you saw the French fleet in the afternoon of the 23d. of July, can you inform the Court of what force they consisted?

A. I really cannot tell their force, Sir; but I counted upwards of forty-four sail, large and small.

Q. How was the Vice Admiral of the Red's division situated at that time, relative to the rest of the fleet?

A. I really do not know; for I did not take particular notice.

Q. Do you think that the French, any time upon the 23d. could make out the force the British fleet consisted of?

A. Upon my word I cannot say.

Q. Was you much nearer to the French fleet than the red division was?

A. I believe we were; but cannot be certain. I did not take particular notice at that time.

Q. Did the Admiral pursue the French fleet in the afternoon of the 23d. in a line of battle, carrying a deal of sail?

A. He did.

Q. On the 27th. of July in the morning, how far was the Vice Admiral of the Blue and his division to leeward of the Victory, when the signal was made for the ships to chase to windward?

A. I was not on deck when the signal was made, but came soon after five o'clock, at which time the Victory was a-stern, and to windward withal; and I apprehend, to the best of my judgment, the Victory could not be less than two miles, as near as I can form a judgment at this distance. We were a-head, with our larboard tacks on board.

Q. Under what sail was the Vice Admiral of the Blue, and the ships of his division, at the time you came upon deck, at five o'clock?

A. I cannot answer for the sail of the division in general, but the Worcester was under close reef'd top-sail, fore-sail, main-top-mast stay-sail, and fore-top-mast stay-sail.

Q. Do you understand, Captain Robinson, when a signal is made to chase to windward, that it obliges you to stand on one tack till the Admiral makes a signal for the fleet to tack?

A. I always understood when a ship's signal is made to chase to windward, that I was obliged to continue and make sail in compliance to the signal, till I had got to such a distance as that I could plainly see the Admiral's signals to call me in, or tack when the Admiral thought proper.

Q. Could you not have tacked without the Admiral's making a signal for you to tack?

A. I undoubtedly could have tacked my ship.

Q. Was you authorized to tack?

A. Not in that case; when we chased I apprehend I was not.

Q. Then I would ask you whether there is not quarter-signals for ships to chase upon, when the Admiral would have them chase upon any quarter?

A. Certainly there is.

President. When your signal is made to chase to windward, do you or do you not think you are empowered to take advantage of the wind, by tacking without signals?

A. Yes, Sir, when I have an object in view.

Admiral Montagu. Suppose you have not an object in view, but your signal is made from the Admiral to chase to windward, do you not look upon it as your duty to get as far to windward in the wind's eye as you can?

A. I do.

The Admiral. I would ask Captain Robinson, would you not have tacked before you did, without waiting for a signal, if you had expected the fleet to close with the enemy so soon?

A. I certainly should have tacked when I found the object of our chasing, or the intent and meaning of our chasing, was answered; which was that of bringing the French fleet to action, as I apprehended. We chased in order to bring the French to action.

Q. When you saw the English fleet engaging, did you keep your wind, or could you, by leading with a very wrap full sail, have joined those ships sooner than you did, or close in with your division sooner than you did?

A. If I had kept my wind, I could have weathered more than half the whole French fleet, the wind having shifted two or three points to the westward, and I was obliged to keep away in order to join my division as soon as I could; but in the mean time the French fleet edged away, and I was afraid they would have cut me off from my division. The Vice Admiral of the Blue's division.

Q. Then, Sir, could you imagine it possible for the Admiral to make a signal that should put you in that situation?

A. Not intentionally, I am clear.

Q. Then at the time you describe there were four ships a-stern of the Formidable, what ship was the nearest of those four to the Worcester?

A. I believe it was the Robuste.

Q. Was it at this time that you supposed yourself about a mile from the Formidable?

A. No, Sir, by no means.

Q. Were there any ships between you and the Formidable, at the time you came out of action?

A. There was not, Sir.

Q. Can you inform the Court what became of those four ships you described to have been a-stern of the Formidable during the action, when you came out of action?

A. Every one of the ships a-head of the Worcester were engaging the enemy during the action, consequently stood on, and I believe went to leeward of the Formidable to the best of my knowledge, when the smoke would admit of my taking notice of or seeing any ships a-head of me, which was but seldom.

Q. Was the Formidable's mizen top-sail aback during any of these times when those ships passed to leeward of her?

A. I never saw the Formidable's mizen top-sail aback.

Q. Did those ships pass to leeward, and a-head of the Formidable when in action, in consequence of the Admirals signal at five o'clock in the morning, to chase to windward?

A. Had the signal not been made to chase to wind-

windward, it is possible those ships would have been in a different situation to what they were at that time.

Q. That does not answer my question: my question is whether they ran to leeward of the *Formidable*, and a-head in consequence of my signal for them, to chase at five o'clock in the morning to windward?

A. I do not know their reasons, it is impossible for me to know them, for they engaged the enemy before the *Worcester* came into action, being a-head of me on that tack.

Q. Do you mean, Sir, that they were never so closed as to give succour, or support to the Vice Admiral of the Blue, and to one another?

A. My answer is, that I do not know, during the action, that we were ever nearer than half a mile from one another, sometimes more to the best of my knowledge, and when we could see one another for smoke.

Q. Do you mean by that word sometimes to vary it to after the action or during the action, because that may take in different periods?

A. During the action we were not at equal distances, far from it; I cannot be particular as to the times, but it was between five minutes after twelve at noon, and five after two in the afternoon, the time I was engaged.

Q. Do you mean to say, that at no time between five minutes past twelve, and five minutes past two in the afternoon those ships were closed together nearer than half a mile to support each other?

A. I really do not recollect, in that space of time, being closer.

Q. You have taken in a large time, Sir, and I take in a large time in following you. During the time the *Worcester* was in action, do you recollect whether they were or were not?

A. I do not recollect that they were.

Q. Do you recollect that they were not?

A. I do not know that they were; I really cannot judge of the whole time.

Prosecutor. He does not recollect the time.

The Admiral. With the court's leave I shall ask questions; if I ask improper ones, I am in the judgement of the Court, and they will do what they please with the questions. If Captain Robinson has said any thing on his original examination, I stand to re-examine him, to cross question him, and I may ask him questions again, I suppose, that he has answered to before; if I may not I shall submit.

Court. Certainly, Sir, you may.

The Admiral. I will now remind Captain Robinson, as he takes in a large time, I must pin him down to time, as he looked at his watch frequently, as you have said three ships passed a-head and to leeward of the *Formidable* during the action, how do you reconcile that with their never being nearer than half a mile?

A. I did not say they passed a-head of the *Formidable*, they passed a-head of the *Worcester* from the situation they were a-stern of the *Formidable*, they passed a-head of us.

Admiral Arbuthnot. You are certainly mistaken, Captain Robinson, you said the *Formidable*.

A. They went a-head of the station they were in between the *Formidable* and *Worcester*.

Court. Then they must have closed.

Admiral Arbuthnot. Read that question and answer where Captain Robinson mistakes, where he says they went to leeward, and a-head of the *Formidable*—you did say *Formidable*.

A. Towards the *Formidable*.

Admiral Arbuthnot. To the best of your knowledge, you said you passed a-head and to leeward of the *Formidable*.

Prosecutor. That he may have the benefit of letting that part of the minutes be read to him; read that which will lead him up gradually to the period from which he spoke, and not lead him on to the end of the engagement.

The Admiral. It is very just that Captain Robinson should have the minutes read as often as he can, to recollect himself, but that gentleman is not to say this or that was done. I only desire the minutes may be read without his observations; I apprehend that is the fair way. I hope Captain Robinson will use his own recollection.

The evidence read again.

At last the prosecutor admitted they went a-stern of the *Formidable*.

The Admiral. If they were a-stern of the *Formidable* while in the action, and got out of action before her must they not have passed her during the action?

A. I do not know.

Q. Captain Robinson, you have stated your ship to be very much exposed by itself, and that you began the action with the second or third ship of the enemy's van, and engaged till you got to the rear. I should be glad to know what number of men you had killed or wounded, Sir.

A. I had but three men killed and five wounded, but some of the men I believe died of their wounds in two days afterwards.

Q. Was the *Victory* standing towards the enemy upon the larboard tack, when you first saw her after you came out of action?

A. I think she was.

Q. Can you inform the Court the precise time you first wore, after the time you came out of action, and laying your head towards the enemy?

A. I cannot tell the precise time.

Q. Can you say any time near it?

A. I believe near half after two, but cannot be positive exactly to the time of our wearing.

Q. How long did you stand upon the larboard tack after you had wore towards the enemy, and when you were standing back again to the Admiral; was it by signal?

A. The moment I wore I brought to; I did not make fail; I was not in a situation to make fail.

Q. When you wore back to the Admiral, was it by signal?

A. No: I did not see the Admiral. I was engaged putting my ship to rights.

Q. After you wore back to the Admiral, how near did the Admiral pass to the *Worcester*?

A. I really do not recollect how near. No great distance.

Q. Did you pass her?

A. I believe the Admiral passed the *Worcester*.

Q. Do you mean after the *Worcester* wore a second time? Was the Admiral then on the larboard tack?

A. I believe he was.

Q. Did you see the signal flying on board the Admiral at that time for the line of battle a-head?

A. No, Sir, I did not see the signal for the line of battle a-head at that time, but at four o'clock in the afternoon.

Q. Had you no officer appointed to observe the Admiral's signals?

A. I had; but he was wounded early in action.

Q. When you passed the Admiral, or the Admiral passed you, do you recollect where the *Formidable* was at that exact time?

A. To the best of my knowledge and recollection, she was to windward of the *Worcester*.

Q. How near?

A. I cannot ascertain the distance, but she was not far off, Sir; but a very little way, I think.

Q. Do

Q. Do you say positively that when you wore the second time after the action to stand towards the Admiral, several ships passed you a-head of the Victory, on the larboard tack?

A. I am positive of some ships, what they were I do not know; and that one of the ships, to the best of my remembrance, hailed the Worcester, and told us to get out of the way, for that the Admiral was coming; to the best of my recollection.

Q. Was the Worcester and that ship to the southward of the Victory at the time she hailed you?

A. I do not recollect.

Q. I will remind you, Captain Robinson, the southward was a-stern of the Victory, when the Victory was upon the larboard tack?

A. I really do not recollect that.

Q. Because you conceive the ship was a-head of the Victory, I remind you the southward was a-stern of the Victory: You have before said a-head of the Victory; and why, because you are sure of one ship which hailed you. Then I ask you positively, whether that ship, when she hailed you, was a-head of the Victory or a-stern, and to the southward?

A. I really do not recollect; I am sure if I did I would inform you.

Q. Do you know of any other ship?

A. I was so engaged in putting my ship to rights at that time, I really do not recollect I observed.

Q. At what time did you first observe the French fleet forming their line upon the starboard tack, standing towards the British fleet on the 27th.

A. I do not remember, Sir, to have seen them forming their line. I saw very little of them till the action had began in the van.

Court. After the action?

A. I observed some of the French ships standing with their heads to the southward between two and three o'clock. I cannot precisely tell the exact time.

Q. Was it before you wore towards the English Admiral?

A. Yes, Sir.

Q. When you say you got into the Admirals wake, and in your station at six o'clock in the evening upon the 27th; do you mean you was then in the wake of the Vice Admiral of your own division, or in the wake of the commander in chief?

A. I mean that I was in my station in the Vice Admiral of the Blue's division, and as near as I could get between the Vengeance and the Elizabeth; but that the Vice Admiral of the Blue was then to windward, and the commander in chief a-head, and to windward withal.

Q. Do you mean the commander in chief was upon the weather bow of the Worcester?

A. He certainly was to windward, but how far upon the bow, I do not know, how many points I do not know, a-head, and to windward withal as near as we could observe on board.

Q. When the Admiral laid his head to the northward on the 28th, did he bring to on the larboard tack?

A. I believe on the 28th in the morning, the Admiral made the signal to wear, laid their heads to the northward and we brought to, I think so to the best of my recollection.

Q. Did he not stand before the wind at all after wearing?

A. I do not certainly recollect that Sir, he might. I believe you did make the signal for the line, and flood on afterwards a little while.

Q. After the fleet was laid to upon the larboard

tack, was your ship one of those that made the signal to set up rigging?

A. I did not make the signal at all, I did not see a signal made by others.

Q. Not after we laid to?

A. No.

Q. As Captain Robinson has said he was positive several ships passed him a-head of the Victory upon the larboard tack, after the action, and gave his reason for that certainty that he was hailed by a ship that told him to get out of the way, the Admiral was a-coming up, what does he mean by saying he does not recollect whether the ship that hailed him was a-head or a-stern of the Admiral?

A. Upon recollection I think he must be a-head of the Admiral upon the larboard tack, he would hardly have told me to get out of the way, the Admiral was a-coming. I think so I cannot be positive.

Q. Do you recollect whether the ship that hailed you was upon the larboard or starboard tack?

A. As I have observed before I cannot be positive.

Q. Do you recollect whether it was, a two deck or a three deck ship that hailed you?

A. I really do not.

Admiral Montagu. Do you recollect what answer you gave to the ship that hailed you?

A. Perfectly well.

Q. Tell the Court what it was?

A. My answer was They must see my situation, and it was out of my power to get out of their way, I would as soon as ever I could.

Q. When you was hailed, did not you naturally look to see where the Admiral was?

A. I did not see the Admiral, but they told me the Admiral was a-stern coming up.

President. What happened in consequence of that answer, did the Admiral pass by you to windward or leeward, or did the ship that hailed you go to windward or leeward, or bring to?

A. To the best of my remembrance she passed on a-head of me.

Q. To windward or leeward?

A. I do not recollect.

Q. Did the Admiral pass you?

A. I do not recollect, I was so busy engaged in getting my ship in a condition again for action.

Mr. JOSEPH SOWELL, the Master of the Worcester, sworn.

Court. Have you ever heard the charge read?

A. No, I never have heard it read.

The charge was ordered to be read to him.

Prosecutor. Mr. Sowell, do you remember seeing three ships of the enemy in the morning of the 28th, at day-light?

A. Yes.

Q. What distance do you reckon they were from the British fleet?

A. The sternmost ship of the three, was from the Worcester a short mile and a half as near as I could judge.

Q. Was she nearer to any other part of the British fleet than the Worcester?

A. There was a ship a little a-stern of the Worcester, rather a little on the larboard quarter which did appear to me to be something nearer than we were.

Q. I would ask Mr. Sowell whether he remembers when the Worcester came out of the action, at what distance the Admiral and the body of the fleet were then beyond the enemy?

A. As near as I could judge they were to southward of the Worcester about two or three miles, their heads towards the enemy, with their larboard tacks on board.

S

Q. Do

Q. Do you remember taking notice of the Vice Admiral of the Red and his division about that time?

A. I remember seeing the Vice Admiral of the Red and some ships with him to windward of the Admiral, and a-head withal.

Q. Were they also upon the larboard tack?

A. The ships I saw had their larboard tacks on board.

The Admiral cross examines the Witness.

The Admiral. I will trouble the court very little about this one question, relative to the 28th, the witness before you has said that when they discovered the French ships to leeward in the morning they were to leeward, upon their lee-quarter, there was another ship nearer her, and he described himself to be within a mile and an half from this ship, did the Worcester or did the ship nearer to those ships discovered, that lay with their heads to those ships so very near, hoist any signal to the Admiral informing him that they were enemies?

Sowell. The Worcester did not, as to the other ships I cannot be accountable for, my attention was otherwise taken up.

Q. At what time did the Worcester come out of action on the 27th?

A. At two o'clock, I cannot say to a few minutes.

President. Had your signal been thrown out to chase at that time, was you capable of giving chase at the time you are speaking of in the morning, at the time you saw those three ships?

A. No.

The Admiral. You say you came out of action about two, did you see the Victory then?

A. I did not.

Q. How soon then did you see her afterwards?

A. About three o'clock.

Q. Was she then upon the larboard tack?

A. She was bearing down, and had the signal flying for the line of battle.

Q. Did you at that time see any ships formed a-head or a-stern of her, formed in a line of battle?

A. No, I did not, there were a great many ships round her.

Q. Do you mean a-head of the Victory?

A. There was some a-head and some on each side of her.

Q. Can you name any?

A. No, I cannot.

Q. Do you mean the Vice Admiral of the Red and the ships with him were among that number?

A. They were to windward of him, but I cannot recollect whether any of those ships bore down with him at that time.

Q. Then you cannot name any one individual ship?

A. Not one of them Sir.

Q. Those ships you observed around, or a-head of the admiral, though you do not know one of them, were they on the starboard tack?

A. They were going down before the wind with the line of battle flying, the Admiral had the line of battle flying at the same time.

Q. Are you quite exact Sir, as to your time?

A. I cannot be certain, it was between three and four in the afternoon.

Q. Did the Worcester wear and lay her head towards the enemy after she came out of the action?

A. She did.

Q. How long did she continue upon that tack, before she wore again?

A. About half an hour.

Q. How near did she pass the Victory, standing upon the larboard tack after the Worcester's wearing a second time and standing to the southward?

A. About a mile.

Q. Do you recollect at what time it was?

A. I cannot justly say the time, it was something after three o'clock.

Q. Do you recollect any ships hailing you after this time, after passing the Victory?

A. No Sir, I recollect to the best of my remembrance there was a ship that hailed us, and desired us to endeavour to make more sail, to get out of the way of her, as the Admiral was then a-stern of him, and other ships on each side of him.

Q. Was that ship then upon the starboard or larboard tack?

A. Neither one nor the other, she was coming down upon us, right before the wind.

Q. Do you recollect the name of that ship?

A. I cannot Sir.

Q. Nor whether she was a three deck ship, or a two deck ship.

A. She was a three decker.

Q. You have said the Admiral was coming down before the wind, am I to understand you, she was sailing down before the wind or in a state of wearing?

A. She was going before the wind in a state of wearing upon her starboard tacks, she seemed to haul up with the starboard tacks, to form the line of battle.

Q. Did you see the signal flying for wearing at that time?

A. I did not.

Court. Did you see the signal for the line of battle at that time.

A. I did.

Q. Is that the time you meant when ships were a-head of the Victory?

A. No, afterwards.

Court. I should be glad to know when you came out of the action, what distance you was from the Formidable?

A. Just about a quarter of a mile.

Q. Did you make a signal to set up rigging in the morning of the 28th?

A. We did to the best of my remembrance, we made a signal, we hoisted a pendant at the ensign staff, and several other ships did the same.

GORGE DUNN, the Second Lieutenant of the Worcester, sworn.

Prosecutor. I could wish to put the same questions to him, I put to the master from the first to the last.

Q. Mr. Dunn, do you remember seeing three ships of the enemy's in the morning of the 28th at day light?

A. I do Sir.

Q. What distance do you reckon they were from the British fleet?

A. I believe the nearest ship from my own recollection might be about a mile and an half from the lee quarter of the Worcester.

Q. Was she nearer to any other part of the British fleet than the Worcester?

A. I believe there was a ship a-stern of us and she was rather nearer than the Worcester, but I am not certain of it.

Q. Mr. Dunn, do you remember when the Worcester came out of the action, at what distance the Admiral and the body of the fleet were then beyond the rear of the enemy?

A. I

A. I do not recollect.

Q. Do you remember taking notice of the Vice Admiral of the Red and his division about that time?

A. I did, I saw them upon our weather beam as near as I can recollect.

Q. Were they also upon the larboard tack?

A. I think to the best of my remembrance they were.

Prosecutor. When you saw the Vice Admiral of the Red, as you mentioned, upon your weather beam, was they under sail or laying to.

A. I think to the best of my recollection laying to.

Prosecutor. I have done with him.

The Admiral. I beg the same questions may be asked of him that I put to the master?

Admiral Montagu. Where was you quartered during the time of action.

A. On the lower deck.

Cross Examination.

Judge Advocate. When you discovered the French ships to leeward in the morning they were to leeward upon their lee quarter; there was another ship nearer her, and you described yourself to be within a mile and an half from this ship, did the Worcester, or did the ship nearer to those ships discovered that lay with their heads to those ships so very near; hoist any signal to the Admiral informing him that they were enemies?

A. I do not recollect that they did.

Q. At what time did the Worcester come out of action on the 27th?

A. A little after two o'clock.

Q. Had your signal been thrown out to chase at that time, was you capable of giving chase at the time you are speaking of in the morning at the time you saw those three ships?

A. I think not.

The Admiral. You say you came out of action about two, did you see the Victory then?

A. I don't recollect that I did.

The first Lieutenant of the Worcester was called, but a report was made to the Court he was so ill as to be unable to attend.

Prosecutor. I desire the Court's approbation, that the Judge Advocate may read Admiral Keppel's letter of the 30th of July.

Court. Read that letter.

Judge Advocate.

Victory, at sea, July 30, 1778.

S I R,

MY letters of the 23d and 24th instant, by the Peggy and Union cutters, acquainted you, for their lordships information, that I was in pursuit, with the king's fleet under my command, of a numerous fleet of French ships of war.

From that time, till the 27th, the winds constantly in the S. W. and N. W. quarters, sometimes blowing strong, and the French fleet always to windward going off, I made use of every method to close in with them that was possible, keeping the king's ships at the same time collected, as much as the nature of a pursuit would admit of, and which became necessary from the cautious manner the French proceeded in, and the disinclination that appeared in them to allow of my bringing the king's ships close up to a regular engagement: this left

but little other chance of getting in with them, than by seizing the opportunity that offered, the morning of the 27th, by the wind's admitting of the van of the king's fleet under my command leading up with, and closing with, their centre and rear.

The French began firing upon the headmost of Vice Admiral Sir Robert Harland's division, and the ships with him, as they led up; which cannonade the leading ships and the Vice Admiral soon returned, as did every ship as they could close up: the chase had occasioned their being extended, nevertheless they were all soon in battle.

The fleets, being upon different tacks, passed each other very close: the object of the French seemed to be the disabling the king's ships in their masts and sails, in which they so far succeeded as to prevent many of the ships of my fleet being able to follow me when I wore to stand after the French fleet; this obliged me to wear again, to join those ships, and thereby allowed of the French forming their fleet again, and range it in a line to leeward of the king's fleet towards the close of the day; which I did not discourage but allowed of their doing it without firing upon them, thinking they meant handsomely to try their force with us the next morning; but they had been so beaten in the day, that they took the advantage of the night to go off.

The wind and weather being such that they could reach their own shores before there was any chance of the king's fleet getting up with them, in the state the ships were in, in their masts, yards, and sails, left me no choice of what was proper and adviseable to do.

The spirited conduct of Vice Admiral Sir Robert Harland, Vice Admiral Sir Hugh Palliser, and the captains of the fleet, supported by their officers and men, deserves much commendation.

A list of the killed and wounded is herewith inclosed.

I send captain Faulknor, captain of the Victory, with this account to their lordships, and am,

S I R,

Your most obedient and

very humble servant,

A. K E P P E L.

The *Prosecutor* desired the Entry from the Admiral's Journals of those two days might be read.

Judge Advocate. The journal is signed by the Admiral.

Monday the 27th, Wind S. W. S. W. by S. S. W. S. W. by W. S. by E. W.

Course N. 57 deg. W. Distance 52 miles. Latitude 48, 31. N. Longitude 2. 39. W.

Bearings, Ushant S. 89 deg. E. Distance 36 leagues.

Remarks. Fresh breezes and cloudy weather; at eight squally; took in the third reef of the top-sails; the French Fleet bore from W. S. W. to S. by W. Wind S. W. Course W. N. W. at midnight fresh gales and cloudy; at day-light saw the French fleet to windward, the Vice Admiral of the Red and his division well on the weather beam; the Vice of the Blue on the lee bow; at ten, the French Admiral to the southward, I instantly made the signal, and tacked after them; half past ten, the wind at this time veered, so as to let the King's fleet lay up for the body of the French fleet; eleven, the French Admiral tacked again; half past eleven, observing the French engaged with

with the headmost of Vice Admiral Sir Robert Harland's division; as they led up, I made a signal for battle, and stood on in the Victory; the French line upon a contrary tack, with their heads to the northward; at 5 min. before twelve, perceiving we were near up with the French Admiral, I ordered the main-sail to be hauled up; soon after the French Admiral with the White flag at the main-top mast head began to engage the Victory, who had reserv'd her fire till now; having passed the French Admiral, came on to their Vice Admiral of the White, who bore down and engaged us; the Victory continued passing their line till a quarter before one, when we passed the sternmost of their ships; Vice Admiral Sir Robert Harland and all the ships a-head of me, engaged the French as they passed them, as did likewise Vice Admiral Sir Hugh Palliser, with the ships with him a-stern.

Tuesday the 28th, Wind N. by E. and W. by N. Course S. 52 deg. E. Distance 35 miles; Latitude 48. 10. N. Longitude 2 deg. 1 min. W. Bearing, Ushant N. 75 deg. E. Distance 27 Leagues.

Remarks. Fresh breezes and cloudy weather; 20 min. past one, made a signal to wear, and laid the ships heads towards the French fleet: 2. made a signal for the line a-head, perceiving several of the ships so far disabled in their masts and sails as not to be able to join me: 3. I wore again towards them, which gave an opportunity for the French to form their fleet again, and range it in a line to leeward of the King's fleet towards the close of the day; stood on all night, with a moderate sail; the ships in a line of battle; the French fleet in a line to leeward; eleven o'clock, the French made a signal by rockets; at day-break perceived the French had taken advantage of the night to go off; saw three sail to leeward, who were French ships and bore away immediately upon seeing us; I made a signal for some ships to chase them, but most of the ships being crippled in their masts and sails, I called them in again: saw some sails to leeward from the mast head, considering the wind and weather being such, that the French could reach their own land before there was any chance of the King's fleet getting up with them, in the crippled state they were, in their masts, yards, and sails; I hauled to the northward to get the channel open; 5 A. M. brought to, for the ships to get themselves to rights in their masts and rigging; at noon made sail; fresh breezes.

Captain John BAZELEY of the Formidable sworn.

Admiral Montagu moved the Court that all the letters and papers that are read in court during the fitting may remain upon the table, as well as the Admiral's journals, for their perusal.

Court. Agreed.

Prosecutor. Does Captain Bazeley remember seeing the French fleet on the morning of the 27th of July?

A. Yes.

Q. Did they at any time appear to you to be in a line of battle?

A. They did.

Q. Do you remember the situation of the Vice Admiral of the Blue and his division upon that morning, with respect to the Admiral, whether they were a-head of him, and upon his lee bow, or how otherwise situated?

A. The Vice Admiral of the Blue was upon the Admiral's lee-bow, and a-head withal with the division; some part of the division upon the weather of the Vice Admiral.

Q. Do you remember a signal being made for six ships, or how many ships of the Vice Admiral of the Blue's division to chase?

A. To the best of my recollection six ships of the Vice Admiral's division.

Q. Did that signal cause those ships to be dispersed and separated from their Admiral, and from each other?

A. It caused those ships to be extended from their Admiral, but whether separated from each other I do not recollect.

Q. In the morning when the Vice Admiral with his division was situated as you have described, were they not in a proper situation and at a proper distance for readily taking their station in a line of battle, if the signal had been made?

A. They appeared so to me, if the signal for the line of battle had been made for forming upon the larboard tacks.

Q. If all the ships of that division had been suffered to remain with their Admiral, might they not have gone into action with him in a joint body, so as to have supported each other?

A. Yes.

Q. Did the chasing ships, so far as you know, come into action separately, and at distances from each other?

A. They appeared so to me those that were a-stern.

Q. Did part of them, by chasing, go a-head of the Formidable, and join the center division?

A. Yes, two of them.

Q. Did those ships, being taken away from the Vice Admiral, leave him to go into action equally supported as the other flag officers?

A. No.

Q. Was any of the ships of the Vice of the Blue's division within gun shot of the Formidable when she began the action, except the one then to leeward of her?

A. The nearest ship that I recollect that was a-stern was better than half a mile from her.

Q. During the action, were not four of our ships at a distance a-stern not together, but at a distance from each other?

A. They appeared so before the action began, but afterwards I cannot answer to.

Q. During the time the Formidable was engaged passing along the French line, were any ships so near to her as to have afforded support to each other, except at one time a ship shot up under her stern so close in the thick of the smoke, that to avoid being on board her, she was obliged to run to leeward, that rendered her fire useless?

A. After the Formidable had opened her fire, I observed no ship whatever except the one the Vice Admiral alludes to coming under her lee.

Q. What ship was that supposed to be?

A. I cannot speak to that.

Q. What part of the French line did the Formidable begin close action with?

A. One ship a-head of the French Admiral, of the center.

Q. Did she receive the fire of several ships in the van before she returned and began close action herself?

A. Yes.

Q. Do you think the damages the Formidable received were not much greater than they probably would have been, if she had fought in a body with the rest of the Vice Admiral of the Blue's division.

A. Most undoubtedly.

Q. As you passed along the French line, did they appear to you to be more irregular than might reasonably be expected, after having been engaged with the van and center divisions of the British fleet?

A. No.

Q. The four ships you spoke of a-stern being at a distance, did not the Formidable back her mizen-top-

top-sail, in order to proceed slowly along the line, and let those ships close to give time for them to close?

A. The mizen top-sail was backed to prevent her from shooting a-head to avoid the Ocean's fire, and was also for the ships to close us a-stern.

Q. At what distance from the enemy's ships did she begin a close engagement, was it within musket shot?

A. Yes.

Q. Did she pass within the same distance of every other ship along the line to the rearmost ship?

A. Nearer to some of them, but a greater distance from others.

Q. I think, Sir, you said some of the Vice Admiral of the Blue's division joined the center division; then was not the Admiral supported with the whole of his own division, and that part of the Vice Admiral of the Blue's?

A. I have said two of the Vice Admiral's division passed, but what number of ships he was supported by, I cannot speak to.

Q. In passing along the enemy's line, did it or not appear to you several of them were much damaged, they not keeping up so brisk a fire as the rest.

A. I did not observe any particular damage that any of the ships had received, but that the center Admiral for two hours, and two other ships returned us very little of their fire.

Q. Did you observe one of them disabled and run down to leeward out of the line with a frigate, after we had passed them?

A. One ship with her main yard down quitted the line attended by another ship.

Q. How long upon the whole do you reckon the Formidable was engaged from first to last?

A. I cannot speak exactly as to time, but to the best of my recollection an hour and forty minutes.

Q. When the Admiral with the van and center divisions had passed the rear of the enemy, did he immediately wear and double upon the enemy and continue the engagement?

A. It is impossible for me to answer when the Admiral did wear.

Q. When the Formidable came the length of the rear of the enemy, was the Admiral with the rest of the fleet, so near to the rear of the enemy as immediately to renew the engagement?

A. No.

Q. When the Formidable ceased firing, do you remember you and myself taking notice, that the Admiral with the body of the fleet then with him, were standing towards us, and that I therefore ordered the ship immediately to be wore?

A. I recollect after the Formidable had passed the enemy's rear, that the Vice Admiral of the Blue directed the ship to be immediately wore: I then observed the Victory had some ships with her standing to wards the enemy.

Q. At what distance Sir, do you recollect the Admiral was, and those ships said to be with him, was at that time from the Formidable?

A. Two mile.

Q. When the Formidable wore, as before mentioned, was we then directly in the stream of the enemy's line, or in the wake of the sternmost ship?

A. In the wake of the sternmost ship of the enemy.

Q. About what distance?

A. Random shot.

Q. Was that the time you speak of, when you reckon the Victory was at two miles distance from the Formidable?

A. At the time she was wearing.

Q. While the Formidable was wearing, did not

the sternmost ship of the enemy's line fire a-stern chace at her, or edge away to bring her stern chace or some of her after guns to bear upon her?

A. I recollect after the helm was a-weather, that one or two shot was fired at her.

President. Were they near enough to hit her?

A. Yes, they passed close under her counter, the shot did.

Q. While the Formidable lay with her head towards the enemy, were not the officers and men ordered to return to their quarters, in expectation of going again into action when the Admiral should come up with the fleet?

A. Yes, immediately after the ship was wore.

Q. After laying that way a little while, did you observe three of the enemy's ships making sail directly towards the Formidable?

A. Yes, pointed immediately to her.

Q. At this time was not the Formidable nearer to those French ships than the Victory was to her?

A. The Formidable was nearer to the Victory than to the enemy's three ships.

Q. When the Formidable wore again, did those French ships edge away and begin to form into a line of battle a-head, pointing to leeward of the English fleet?

A. Yes.

Q. Did you see the Vice Admiral of the Red and his division, at the time the Formidable was laying with her head towards the enemy—whereabouts were they?

A. I did—to windward.

Q. If the Victory and the other ships with the Admiral had wore as near to the rear of the enemy as the Formidable did after coming out of the engagement, the Vice Admiral of the Red having doubled on the rear of the enemy, might not the engagement have been immediately renewed, when the Vice Admiral of the Blue came out of the engagement, and by that means prevented the enemy from forming a new line?

A. I saw nothing to the contrary.

Admiral Montagu. If the Admiral with his division immediately after he came out of the action had wore so near as the Formidable did wear, the Vice Admiral of the Blue and his division being then in the action, would it not have endangered the ships falling onboard one another, one upon one tack, the other on the other?

A. I apprehend not.

Prosecutor. Suppose the Admiral with the ships that were with him had continued to advance towards the enemy with the signal for battle flying at the time the Vice of the Red had bore down to the enemy, do you not conceive the French in that case might have been attacked and prevented from forming a new line, which they were beginning to do then, with their heads towards the British fleet?

A. If the Vice Admiral of the Red and his division had bore down, I conceive it would have obstructed the French from forming their line again so immediately as they did.

Q. You don't seem to have attended to that part of the question which supposes the Admiral and the rest of the fleet advancing at the same time, the one bearing down, the other advancing.

A. I have answered the question with respect to the Vice Admiral, it would have very much assisted to have obstructed their forming a line.

Admiral Arbuthnot. Do you know Sir, the state of the Admiral's ships that were about him?

A. No Sir.

Admiral Montagu. Do you know the state of the Vice Admiral of the Red's division?

A. I know the state of no other ship but that which I commanded in battle.

Captain Duncan. In what condition was the *Formidable* when she came out of action?

(The witness desires to refer to his notes.)

A. All the sails that were set were cut to pieces, the gub and all the stay-sails.

Q. In general was she very much damaged?

A. Very much so.

Prosecutor. The particulars of the damage the *Formidable* received shall be introduced, if the Court should wish it another time; it may be inserted by the Judge Advocate.

Q. Was the ship immediately fit to go into action again?

A. Immediately fit to go into action, but not to pursue an enemy.

(The Court adjourned to Ten the next morning.)

Thirteenth Day's Proceedings, Jan. 20, 1779.

Prosecutor. I desire the last question I put to be read.

The question was read.

Prosecutor. If the admiral, at that time, did not think fit to re-attack, except in a line of battle, might he not have immediately formed one, by making a signal for the vice-admiral of the Red and his division, who was then to windward to take the lead on that tack in place of the vice of the Blue, who was just then come out of action?

A. I saw nothing to the contrary.

Q. Did the enemy, from their motions, shew a disposition towards renewing the engagement?

A. Not till after they had began to form a line to leeward that I observed.

Q. Did the British fleet appear to avoid renewing the action?

A. Yes.

Q. After the *Formidable* wore a second time, did the *Victory* and *Formidable* meet?

A. They passed each other.

Q. When the *Victory* and *Formidable* passed each other, did the *Victory* stand on, or did she wear under the *Formidable's* stern?

A. She wore a-stern of the *Formidable*.

Q. Did she first run to leeward, and afterwards haul her wind?

A. She appeared to me to go from the wind.

Q. Did this leave the *Formidable* a-stern, and to windward withal of her wake?

A. Yes.

Q. When the *Victory* had wore and a little to leeward as you have described, did she not then haul her wind to the southward?

A. She appeared so to do to me.

Q. Were not the French fleet then a-stern?

A. Yes.

Q. Did not the *Victory* continue to stand the same way the rest of that afternoon?

A. Yes.

Q. And the following night?

A. Till day-light the next morning.

Q. Do you recollect what sail the *Victory* carried during the afternoon.

A. I do not recollect that particular.

Q. Did not the *Victory* always outfail the *Formidable* with the same sail.

A. Yes.

Q. After the *Victory* was standing to the southward, did the French stand the same way pointing somewhat to leeward of the British fleet?

A. Yes.

Q. Did the vice of the Red, with his division bear down into the admiral's wake that afternoon?

A. Yes.

Q. Was that his own, or the Vice Admiral of the Blue's station upon that tack?

A. In the line of battle on the starboard tack, it was the Vice Admiral of the Blue's station.

Q. Do you know whether that was done in consequence of the signal flying, or the particular order of the commander in chief?

A. I do not know.

Q. Did you observe the vice of the Red afterwards make sail to get into his own station a-head of the admiral?

A. Yes.

Q. From the various motions of the admiral, during that afternoon, did you conclude he had no intention to renew the engagement till the next morning?

A. It appeared so to me, and I expressed those my sentiments to the vice-admiral at the time.

Court. At what time was that?

A. The time between the signal for battle being hauled down, the fleet pointing to the southward, and the time it was dark.

Admiral Montague. Can you say what hour?

A. No, Sir, I cannot say any hour; I was in too much confusion to take particular notice.

Mr President. Do you remember any conversation that passed between the captain of the *Fox*, and your admiral, the vice-admiral?

A. I never heard the captain of the *Fox* hail the vice-admiral.

Q. Did you see the *Fox*, come under the vice-admiral's stern?

A. I did not see the *Fox* till I heard her ship's company cheer the *Formidable*.

Q. Was you informed what brought the *Fox* there?

A. Not at that time.

Q. At what time afterwards?

A. After dark.

Prosecutor. How far do you reckon the *Formidable* might be from the *Victory* half an hour after the *Victory* passed to Leeward of her?

A. Not more than half a mile. If I understand the question, the first half hour after she passed under her lee—

Q. After the admiral stood to the southward, as before mentioned, did the *Formidable* first haul out of the way of other ships to take their stations between her and the *Victory*?

A. Yes.

Q. How many ships of the line of battle were stationed between the *Victory* and the *Formidable*?

A. The *Formidable* was the ninth ship from the admiral, in the line of battle there was eight between.

Q. After the *Formidable* had so got out of the way of other ships, did she not stand after the admiral with all the sail she could set, and trim as well as the condition of her sails and rigging would admit of.

A. Yes.

Q. Did not the *Victory* notwithstanding, encrease her distance during the whole afternoon?

A. Yes.

Q. Did not the *Formidable* steer all the afternoon after the Admiral, keeping him a little open under her lee bow?

A. Yes.

Q. Was not that a proper course for getting into

into her station in a line of battle, if she could have come up with the Admiral?

A. Yes; I judged it so at the time.

Q. So soon as the Admiral wore and stood to the southward, were not the officers and all hands on board the Formidable set to work to get her rigging knotted and spliced, and to repair other damages?

A. Yes.

Q. Do you recollect the distribution of the officers for that purpose?

A. Yes.

Q. Do you remember the Fox coming to the Formidable?

A. I have already answered that question before.

Q. At what distance do you reckon the Formidable was from the Victory at the time the Fox came down to her?

A. One mile a-weather of the Victory's wake, and three miles a-stern withal.

Q. About what time was that do you reckon?

A. Near sun set.

Q. Was you in a situation to hear the message delivered by the Captain of the Fox?

A. No.

Q. Was not the signal for the line of battle a-head, kept flying on board the Formidable till dark night?

A. Yes.

Q. Was the signal (I am speaking of the latter part of the day you are to understand) for ships to windward, to bear down with many ships pendants of the Vice of the Blue's division, let fly on board the Formidable before or after the Fox spoke to her?

A. Before the Fox cheered the Formidable, I did not hear the Fox speak to her.

Q. Were not those signals made in repetition of their being out on board the Victory?

A. Yes.

Q. Had not two of those ships pendants been hauled in, because the ships had answered to them before the Fox came down.

A. I do not recollect that circumstance.

Q. Did the Fox's men cheer the Formidable first, or did the Formidable's men cheer the Fox first?

A. The Fox first cheered the Formidable, and the expression I made use of to the officer and the men on the fore-castle was, that is hearty my lads, return the cheer.

Q. Please to give the Court some account of the material damages of the Formidable, to her masts, sails, yards and rigging.

A. Do you mean I should enter at large upon them, Sir?

Q. The particulars about the foremast first.

A. The foremast very much wounded and rotten; the fore-top mast wounded, and fore-yard, and the bowsprit; the gib and fore top mast stay sail cut to pieces, and went overboard by the enemy's shot: the fore top-sail cut to pieces, the fore-sail very much damaged, fore stay and spring-stay shot away, all the fore shrouds upon the starboard side, except one shot away, and only three remaining on the larboard side; all the fore top-mast shroud and back stays, except one pair on the larboard sides; top gallant shrouds and stay; all the braces and bowlings and running ropes in and about the fore-mast, few excepted. The fore-tacks and sheets were shot away on both sides.

Q. Is not this a more full and exact account than what could be collected the next day, when an account was sent to the commander in chief?

A. Yes.

Admiral Montagu. Notwithstanding the description you have given of the foremast, bowsprit, fore-top mast, and rigging thereunto belonging of the Formidable, did not the Formidable wear twice before any of the rigging belonging to the fore-mast were put into repair?

A. Yes.

Q. And before the signal for coming down into the Admiral's wake was made?

A. I did not observe the signal to come down into the Admiral's wake, till I was sent for aft about six o'clock.

Q. I ask whether it was not after you wore twice?

A. Yes: And what led me to be more particular to the Admiral's question put to me was, we wore twice with just temporary ropes to brace the yards about.

Prosecutor. Captain Bazely, do you not conceive any ship, with all her masts standing while she has any canvass abroad in moderate weather, will wear by putting the helm a-weather, although her masts and rigging may be in such condition, that she cannot carry sail upon a wind to keep company with other ships?

A. Yes; we had that instance in the Formidable.

Q. Do you remember whether several of those shrouds that were shot, were not cut in two places?

A. Yes.

Admiral Arbuthnot. You have just mentioned that you made use of temporary yard tackle falls, temporary ropes for bracing about these yards, and did brace them.

A. Yes.

Q. Is it not your opinion you could brace those yards up short, and stood upon a wind?

A. We did to follow the Admiral.

Prosecutor. Please to mention the particular damages of the rigging about the main mast.

A. The main top mast very much wounded, the main yard and main top sail yard very much wounded, the main spring stay shot away, seven main shrouds on the starboard side, and five of the larboard main top masts, stay and spring stay, four main top mast shrouds, and all the back stays, mizen stay sail, stay and top gallant stay sail stay.

Prosecutor. Captain Bazely has not spoke to the circumstance of chain plates.

A. I thought you did not allude to more.

Admiral Montagu. I believe the Court are satisfied; I am for one, of the defects of the Formidable, that she was in a very bad condition.

Prosecutor. What chain plates were shot away you will please to mention.

A. Fore channel, three chain plates shot away, main channel two, mizen channel one.

President. After you had passed the French fleet, did they bring to or make sail.

A. They broke up their line, and appeared to me to be under sail not laying to.

Q. Was you then, after these defects, in a condition to have followed those ships to have renewed the engagement, had the Admiral thought proper so to have done?

A. She was in a state to renew the action, but not to carry sail after an enemy.

Admiral Montagu. I have one short question to ask. The Vice Admiral I think asked you, if there were not some difference between your defects you produce now in Court, and those you delivered in to the commander in chief the day after the action; I should be glad to know how long after the action, the defects you produced to this Court were taken?

A. Immediately on her arrival at Plymouth.

Prosecutor.

Prosecutor. Were not the officers and men employed on board the Formidable the whole afternoon, and all the following night, in repairing those damages?

A. Yes.

Q. Did not the Formidable get into her station before day light the next morning?

A. She got into the line, but I cannot answer whether it was her proper station in that line.

Q. Did not the drums beat to arms at two o'clock in the morning, and all hands at quarters, and in all respects ready for action before day-light, expecting immediately to engage?

A. Yes.

Q. During the afternoon of the 27th, notwithstanding the damages you have mentioned the Formidable received, could she not have bore down upon an enemy and have engaged, having only two guns disabled, although she was not able, during the afternoon, to reach her station in the line of battle, with the sail the Admiral carried?

A. Yes; such was the Vice Admiral's declaration to me sometime in the afternoon; I cannot exactly recollect as to time, the particular time I cannot recollect.

Q. In the morning of the 28th, do you remember seeing three French ships to leeward?

A. I remember seeing three strange sail.

Q. Did you suppose them to be three French men of war?

A. I did imagine them to be three of the remaining part of the French fleet.

Q. Did you judge them to be line of battle ships?

A. I did.

Q. At what distance did you judge the nearest of them was from the British fleet?

A. Not more than a mile from the Formidable.

Q. What number of men on board of the Formidable were hurt by an explosion of powder?

A. Reported to me twenty seven.

Q. Were any of them killed outright upon the spot by that explosion?

A. The officer who commanded that deck where the explosion happened, reported to me that no man was killed by the explosion.

Q. What number of killed and wounded did you report to me as sent to the commander in chief after the engagement on the 29th; whole number?

A. To the best of my recollection fourteen men killed, one of which the boatswain, two since dead of their wounds, and forty-nine wounded; one of which the second lieutenant: I believe that was the account.

Q. Have you, Sir, made a comparison of the number of killed and wounded in the respective divisions of the fleet, from the account that was published by authority from Admiral Keppel?

A. I did; just at the time it was first published.

Q. What was the number of killed in the admiral and vice-admiral of the red's divisions together?

A. I do not immediately recollect the number killed.

Q. Do you recollect whether it was more or less than the number in the vice-admiral of the blue's division only?

A. To the best that I can recollect, nearly the same.

Q. And as to the wounded, how is the comparison?

A. Nearly the same.

Q. Were those three strange ships, as you call them, supposed to be French, chased by the British fleet?

A. None; as I observed.

Q. Do you know of any signal having been made of seeing more strange ships to leeward?

A. I don't recollect that circumstance.

Q. If the British fleet had pursued those three ships, and supposing the French fleet to have been in the same direction as they steer'd, was there not a probability of some of our undamaged ships coming up with those three ships, or the disabled ships of the French fleet, and have taken them, if the French fleet abandoned them? Or if they had staid by them, might not another engagement have been brought on?

A. That being a matter of opinion, I wish to decline answering it.

Q. Do you remember what kind of weather it was that morning?

A. Moderate weather.

President. How many knots do you imagine a ship might have gone, with all her sails set?

A. That must depend upon the class of ships.

Q. I mean ships of the line, or the slowest ship that morning, under all the sail they could?

A. Between seven and nine knots.

President. Did not you mention yesterday rockets were thrown up.

A. No, Sir: No such question was asked me.

Q. Did you judge what time the French fleet made sail?

A. I cannot mention it, Sir.

Q. I will ask you that question now, whether there was any signal made in the French fleet that night?

A. No, Sir; not to my knowledge.

Q. What distance was Brest from you at that time in the morning the 28th, or Ushant?

A. Ushant at twelve o'clock at noon was N. 81 E. the latitude 48 and 11, the distance by the reckoning of the Formidable was forty-five leagues, but afterwards, in making the land, we found we were nearer to it by thirteen leagues.

Q. The land of Ushant do you mean?

A. No, Sir; we made the Lizard. When we came in we found we were different in the calculation we made, thirteen leagues.

Prosecutor. Being the middle of summer, short nights, and moderate weather, do you apprehend it would have been attended with any immediate or imminent danger if the British fleet had pursued that of France, so long as they had a fair chance of coming up with them; at least, so far as till we had seen them into port, or made the land?

A. It appeared to me to be no imminent danger.

Q. If you, Sir, had had an engagement with a single ship at that distance from Ushant (from either one or the other) and had beat her to occasion her to run away, don't you think that you ought to pursue her till you saw her into port, or to make the land, all your own masts being standing?

A. In a single ship I should not have hesitated one moment.

Cross Examination.

Admiral Montagu. In the course of your evidence, Sir, you have said the chasing-ships appeared to come into action separately, and at a distance from the vice-admiral of the Blue; do you know the cause why they did so? And could not they get into their stations in the line of battle after they left off chasing?

A. I beg the question may be read over to me that I answered just now.

Admiral

Admiral Montague. I believe the question was, did the chasing ships, so far as you know, come to action separately, and at a distance from me—that is, the vice-admiral?

The Admiral. I must now, though I have not done it before, object to the evidence, upon his cross examination, looking into the minutes to see what answer he has given before. I cannot admit it.

Mr. President. Certainly it must not; for as I understand the business of the prisoner is to cross examine the evidence of the prosecutor, you may refer to your memory, or any other means you can.

Capt. Bazely. I beg leave to make an apology for asking it. In all other trials of flag officers, I beg leave to observe, whenever evidence is upon cross examination, he has asked the indulgence of the questions to be read; and the answers to be read also.

The Admiral. The indulgence, I apprehend, that has been granted to others has been upon my own agreement. I do from this minute disagree to it. I see great reason to disagree to it. I must be obliged to cross-examine this witness very closely, and, therefore, I cannot agree to his evidence being read to him.

The court withdrew upon the question.

Judge Advocate.

The resolution the Court have come to, upon withdrawing, is this: It is agreed, that a witness, when he comes upon his cross-examination by the court and prisoner, ought not to be allowed to have recourse to the answers he may have given to such questions as may have been put to him upon his first examination by the prosecutor.

Prosecutor. I only beg the indulgence of the court in behalf of Capt. Bazely, as he is deprived of having the indulgence other people have had: I only hope the court will have that attention to him, as not to suffer him to meet with any extraordinary treatment.

Mr. President. The Court will act properly.

Prosecutor. It has been stated by the Admiral, he means to be particularly strict to him; and comments have been made upon his examination, that have passed in the Court in a manner previous to the Court's coming to a determination.

Mr. President. The Court will act properly.

Prosecutor. I beg that what I have observed may be inserted in your minutes.

Capt. Duncan. It seems to be the sense of some of the members, that we should retire again.

When the Court returned, the resolution was read by the Judge Advocate.

The Court retired to deliberate upon the question, whether the words uttered by the prosecutor should be entered upon their minutes, and have agreed, as the words seem to be made use of as a reflection upon the Court, as if they would not take the witness under their protection, it cannot be proper such words should be admitted upon the minutes of the Court, and thereby made a part of their proceedings.

Prosecutor. I humbly beg the Court will do me the justice not to put that construction upon what I said.

Mr. President. Sir, you must not be allowed to interrupt the business in this manner.

Judge Advocate. Now, Sir, there is a question before the Court.

Admiral Montague. I do not want you to put it down what I am just going to say to Captain Bazely. The questions I am putting to you are by no means to invalidate your evidence, but for mere information; as I could not get an answer the day before: for my own satisfaction, and for my own future conduct upon this trial. In the course of your evidence you have said, the chasing

ships appeared coming to action separately, and at a distance from the Vice Admiral of the Blue; do you know the cause why they could not get into their stations in the line of battle after they left off chasing?

A. The reason appeared to me, their chasing by signal in the morning.

Q. The latter part of the question is not answered. And could they not get into their stations in a line of battle after they had left off chasing?

A. That I cannot be a judge of.

Q. You have said two of those ships that were chasing went a-head of the Vice Admiral of the Blue, and joined the center; did they do it by any signal from the commander in chief?

A. Not that I know of.

Q. Did the Vice Admiral of the Blue make their signals for to come into their stations, when he saw them go a-head, and join the center?

A. No.

Q. Then if he had made their signals to come into their station, and they had obeyed it, do not you think he would have been better supported?

A. I do.

Mr. President. Do you understand he meant the Vice Admiral of the Blue?

A. The Vice Admiral of the Blue was the question, I think.

Court. Yes; it was.

Q. You have said the nearest ship you can recollect in the Vice Admiral of the Blue's division, to leeward of the Formidable, meaning the Ocean, and that the four ships a-stern of the Formidable before the action began, was at a distance from each other, and half a mile asunder, and that the damage the Formidable received was greater than if she had fought with the body of the Vice Admiral of the Blue's division; do you not think if the Vice Admiral of the Blue had made a signal for the four ships a-stern to close the line, and come nearer to each other, and nearer to him, agreeable to the 7th. article of Admiral Keppel's fighting instructions, they would not have supported him, and have taken off a great deal of the fire of the enemy?

A. In the first place I do not recollect what the signal of the 7th. article expresses. Will you give me leave to look at it? (The witness looked at the book, and—

Admiral Montague stated it.

A. It appeared to me that if the signal had been made for those ships a-stern to have closed the Vice Admiral of the Blue, they could not have done it more expeditiously than they did, as they appeared to me to have all the sails set necessary to close in the action.

Answer read to him.

A. That is my answer.

Q. I mean when they were in action?

A. No, before they came into action; after we began the action I saw nothing.

Q. I can only say, I mean while they were engaging all the rear of your division, running along the French fleet?

A. After the Formidable had begun the action I can answer to nothing relative to those ships a-stern, except one that passed under her lee when we were going down the French line.

Q. Pray was the van of the Vice Admiral of the Blue's division a-head of him, and near to support him in time of action?

A. I do not apprehend the question, the van of the Vice Admiral of the blue's division; because the fleet was not in a line.

Q. Was any of the Vice Admiral of the Blue's division a-head of him that should be a-head of him, supposing they were upon his lee-bow, or weather-bow, or right a-head of him?

A. I can only answer to two ships that passed the

the Formidable before she began the action; what the ships names were I know not.

Q. Then you do not know their situation?

A. No, Sir, I cannot tell their situation the smoke prevented that.

Q. What ship did you follow into action?

A. I cannot recollect.

Q. How near was the nearest ship to you a-head of you, just before you came into action?

A. A good half-mile.

Q. You do not know whether she was one of your division?

A. I do not, Sir.

Q. Did you on the 27th. of July see any act in Admiral Keppel that indicated a flight from the enemy? Or did you see the French fleet pursue the British fleet, and offer it battle?

A. The British fleet stood upon the starboard tack forming their line, the enemy forming a line a-stern upon the same tack; whether that has the appearance of a flight, I beg to submit to the better opinion of the Court.

Q. Admiral Keppel is charged with negligently performing the duty imposed upon him. Acquaint the Court if you know of any instance, on the 27th. of July, in which he was guilty of such neglect, or did not perform the duty imposed upon him?

A. I do not hold myself a competent judge to judge of the behaviour and conduct of an Admiral in so high a department, or an officer commanding such a squadron the Admiral had under his command. I stand here as an evidence to answer such questions as are asked relative to the charge, and not called here as a judge.

Admiral Montagu. I did not call you here as a judge; I ask you a fair and honest question: I only ask to your knowledge.

A. I wish to decline giving an answer to that. I do not think it will be right in me, who am so young an officer, to give an answer to that question.

Admiral Montagu. I must ask you; it is a part of the charge and the duty of this Court, to find out, as much as they can, whether charges are facts or not. I have one question more to which Captain Bazely will give his answer. He does not seem to think it a proper question to be asked; I think it is; he is to answer it as he pleases, and then I shall ask him no more. I do not ask for any hear-say evidence, or opinion of other people, or mere opinion of his own; though it is agreed, the prosecutor and prisoner should both ask as to matters of opinion, and the court the same. I do not ask for opinion; I come to matters of fact. Then, Sir, did Admiral Keppel, so far as came within your observation, by his conduct either on the 27th. or 28th. of July, tarnish the honour of the British flag?

A. I must also beg leave to decline to answer that question, for the reason offered in the preceding answer.

Admiral Roddam. Captain Bazely has said, the French fleet seemed, in his opinion, to intend renewing the action, what was your reason for so thinking?

A. The French fleet forming a line to the leeward of the British.

Q. When they were forming a line on the starboard tack, if they had inclined to renew the action, could they not have fetched within pistol shot of the British fleet, and engaged if they had pleased?

A. They could have fetched within pistol shot, if they had pleased.

Q. You say you expressed your opinion, that you judged the commander in chief did not intend to renew the action that afternoon with the enemy,

after hauling down the signal for battle. What was your reason for so judging?

A. Standing from them, and carrying sail so much, that we could not keep or preserve our distance.

Q. Did you from the Formidable ever make any signal that you could not follow the Admiral?

A. No.

Q. If you had made such a signal, do not you think that the commander in chief would have shortened sail?

A. It appeared to me the state of the Formidable was so apparent, as to be no necessity to make that signal.

Q. Is it the commander in chief's business to look out to other ships, or they to look out to him?

A. The junior officers to look out for their seniors.

Q. Was not the signal on board the commander in chief for the line of battle flying while the Victory was standing towards the enemy?

A. I neither saw it, nor heard of it, till she passed us.

Q. Why did not the Formidable fire at the French ships, which, you said, was so near you the 28th. in the morning, which would have shewed the Admiral they were so near you as one mile?

A. I beg leave to submit that answer to the Vice Admiral.

Q. Then I must ask you another. Did you receive any order to do it?

A. No, Sir, none. If you had put that question to me, I would have answered it as I do now, Sir. I received no orders.

Captain Duncan. Was the Formidable at any time of the day of the 27th. in such a condition as not to be manageable?

A. No.

The Court said, they would ask him no more questions.

Cross Examination.

Captain Bazeley has upon some questions refused giving an opinion; to others he has given opinion, which does not quite correspond; I must therefore ask him a question concerning his opinion which he gave the Court, that I did not intend to renew. What sail did I carry as I stood to the southward in the afternoon of the 27th. of July?

A. I cannot recollect the particular canvass you had set; my reason for so saying was, the Victory's fore-reaching from the Formidable.

Q. Was the Victory's top-gallant sails set.

A. I do not recollect they were.

Q. Was her main-tack on board?

A. I did not see her main-sail set.

Q. Was all the reefs out of her top-sails?

A. That I cannot answer to.

Q. Was her gib and stay sail set?

A. From the situation the Formidable was in a-stern of the Victory, it is impossible to say whether the gib or what stay sails were set.

Q. Pray then inform the Court how you know that the Victory had much sail set.

A. What I would mean to be understood by much sail being set.—

The Admiral. I beg a direct answer, a straight answer.

A. I will give you an answer, and explain myself at the same time; you will give me leave to recollect as you have made an open declaration to be so close in your cross-examination of me: You are catching at every word, and I will be as found as I can. In the disabled state the Formidable was in from what I have related to the

the Court in respect to her situation, the Victory being at that time, to the best of my recollection, under her top sails and fore-sail.

Q. Now I understand you to say she was under her top sails and fore sails?

A. To the best of my recollection.

Q. Did not that sail suffer the French leading ship to range up abreast under her top sails, going parallel to the Victory?

A. To the best of my recollection the van of the enemy's fleet appeared to me to be abreast of the Victory about dark.

Q. You have not answered the other part, under what sail they led up abreast under the Victory.

A. Only their top-sails, set the first second and third ships.

Q. At what time does Captain Beazely mean to state the Vice Admiral of the Red should have been called down to have formed in a line upon the larboard tack?

A. I do not pretend to judge.

Read the question again.

The question read.

A. I do not pretend to judge; that part of the question the Admiral alluded to, appears to me to be very applicable to the bearing down of the fleet respecting his forming in that position according to the 31st article of the fighting instructions.

Q. Do you understand the whole of the 31st article that is alluded to—the meaning of it?

A. Will you allow me to examine it?

Q. Certainly he understands the whole meaning of it, because you have answered it before.

A. I think I do; I have read it repeatedly, and am ready to answer to it; I made a mistake if I said I did not understand it, I think I comprehend it.

Admiral Roddam. Read it over again Captain Beazely.

Captain Beazely. I have read it frequently, and think I do.

The Admiral. Was any part of the British fleet leading with a large wind?

A. None, that I saw.

The Admiral. I beg the article may be read in Court.

The 31st. article of fighting instructions read.

Q. Now, Sir, do you take upon you to say, the Vice Admiral of the Red was not called down by message.

A. I do not know.

Q. Do you know how many ships the Vice Admiral of the Red had with him at this time?

A. To the best of my recollection, with himself, nine.

Q. That is the whole of his division, one excepted. Was it not?

A. Ten I conceive to be the number of his division. I can answer to nine, but I cannot to the tenth.

Q. Then you are sure of nine?

A. To the best of my recollection; to swear positive I cannot. To the best of my recollection I have answered before; but to be positive to the point I cannot.

Q. Was the Vice Admiral of the Red, at this time, or the Admiral of the fleet, the nearest to you?

A. I beg leave to know what time?

Q. This particular time when looking, when you saw the Vice Admiral of the Red with nine sail upon the larboard tack.

A. Do you mean when I first saw them?

Q. I mean all the time.

A. I will answer it.

Q. It all means when that signal should have

been made in his opinion according to the 31st. article. It is all meant to that time. I do not run about to different times. About the time they were on the larboard tack.

Desires to see the log-book.

Repetition of the question.

A. Do you want to draw me into an opinion? I will answer it positively, Sir. Immediately when the Formidable passed the enemy's rear, it struck me in that position, Sir, and I counted the ships to the best of my recollection.

Q. I do not want to draw you in to answer any question that is improper; if the Court sees me put an improper question, they will correct me.

A. I only said so in answer to what you have said, that you would be very particular in cross-examining me: I stand upon my honour, Sir, as a captain in his majesty's service.

The Admiral. And I stand upon my life and my honour, Sir, which is dearer to me than my life, and must ask you questions.

A. Certainly, Sir, and I shall be very happy in answering you with all becoming respect, but—

Admiral Montagu. The Admiral has said nothing in this Court, to which you can take any exceptions.

A. I do not mean to behave disrespectfully to the admiral, but he is leading me to opinion.

Admiral Montagu. There is nobody leading you, Sir, for the Admiral is only putting such questions to you that every honest man should answer.

A. Certainly, Sir, I shall answer them.

Q. Was the Vice Admiral of the Red, or the Admiral of the fleet nearest to you?

A. The Vice Admiral of the Red and the ships with him, I must not call it the division, appeared to me a mile a weather of the Formidable, and the Victory at that time two miles distance, when we first passed the enemy's rear. That was the question, I answered it yesterday.

Q. Was it at this time he thought the Formidable might be cut off by the French rear?

A. No, Sir, not after we had passed them.

Q. When was it then?

A. Before we opened our fire, there appeared to me a very great probability that the French Admiral would have made that attempt.

Q. Do you know, Sir, the condition of the center ships, and those of the Vice Admiral of the Red's division, that had led out of fire before the Vice Admiral of the Blue had come out of the fire, the condition of those ships?

A. Does the question require an answer, whether I know the state of the center and the Vice Admiral of the Red's division before we came out of the fire.

Q. You have said the Vice Admiral of the Red had nine ships together.

A. I know the state of no other ship but the ship I commanded the day of battle; that is the question I answered yesterday.

Q. Then do you feel yourself justified as an officer in swearing the action might have been renewed with advantage, if the Admiral had wore as near to the rear of the enemy as the Formidable did, and doubled upon the enemy with the rest of the ships, at the same time that you confess yourself ignorant of the condition of every ship in the fleet but your own.

A. I have said if the Vice Admiral of the Red had bore down, and if the Admiral had advanced with his division to have renewed the engagement, it would have obstructed the enemy from forming a line so immediately.

Q. That does not answer my question.

A. That is the only answer I mean to give to it, and have to make to it.

The

The Admiral desired a question of yesterday to be read, stating it, and the answer to it also he desired to be read.

[Here the Prosecutor made an objection to the Admiral stating any thing from private notes.

Over-ruled by the Court.

At last the same the Admiral stated, and the answer was read.

Q. My question in consequence of that is, do you feel yourself justified as an officer in swearing the action might have been renewed with advantage, if the Admiral had wore so near to the enemy as the Formidable did, and doubled upon the enemy with the rest of the ships, at the same time as you confess yourself ignorant of the condition of every ship in the fleet.

Prosecutor. The word advantage was not in that question.

The Admiral. Then leave out the word advantage, for I did not mean it indeed.

Judge Advocate. I will read the question.

Q. Do you take upon you now, uninformed of the state of any ships but your own, to say, that the Admiral had a sufficient number of ships with him formed in a line upon the larboard tack, and near enough to support him, so as to have prevented the French fleet forming their line upon the starboard tack.

Capt. Bazely. Is this question of the afternoon upon the 27th upon a larboard tack?

The Admiral. Yes, Sir.

A. I do not recollect the Admiral being upon the larboard tack in a line with the ships with him.

Q. When the Formidable passed the Victory, while the Admiral was advancing towards the enemy upon the larboard tack after the action, were there any ships a-head of the Victory upon the same tack with her?

A. I do not recollect ship or ships to be a-head of her.

Q. At what time did you see the Vice Admiral of the Red and his division formed in the rear of the English fleet, while on the starboard tack in the afternoon of the 27th.

A. The time I cannot speak to.

Q. Can you speak within half an hour, Sir.

A. No, Sir, not within half an hour.

Q. Nor an hour?

A. No; only to two particular circumstances that afternoon which I can recollect, when something very particular happened in the ship, Sir.

Judge Advocate. The question is, was it within half an hour or an hour?

A. The answer is no; there is only two particular circumstances in that afternoon I can recollect the time, when something material happened in the ship.

Q. Then you do not recollect the time when the Vice Admiral of the Red quitted his station in the rear in forming a line a-head.

A. I do not.

Q. You saw the Vice Admiral of the Red in the Admiral's rear?

A. Yes, in the rear of the Victory.

Q. Can you inform the Court what was the situation of the French fleet at the time you did see the Vice Admiral of the Red in the Victory's wake?

A. To the best of my recollection forming their line a-stern, and to leeward withal.

Q. What was the situation of the Vice Admiral of the Blue at this time?

A. Do you mean with respect to the Victory?

Q. Yes, Sir, with respect to the Victory, and with respect to the Vice Admiral of the Red.

A. To the best of my recollection the Vice Admiral of the Red was formed rather before the

lee beam of the Victory at no great distance from her, then astern of the Victory.

Q. What course from the wind must the Formidable have steered to have come into the Admiral's wake in her station?

A. That must depend on particular circumstances, how far the Formidable might be a-weather of the Admiral's wake, and at what rate she sailed.

Q. I will give you a supposition, as you have supposed the Vice Admiral of the Red a little before the lee beam; now I must suppose because you are used to understand that. Suppose the Victory at that time, with that wind we had, went two knots and three fathom, what then would have been the course necessary to have steered, to have bore up to have got into her wake in the situation you was in?—I only suppose—What is that you are looking at?

A. The minutes taken from my own log book the day after the battle.

The Admiral. Taken the day afterwards, is just the same as taken the day; I only ask what it was, may I beg leave to see the log book.

The Court ordered it to be handed to the Admiral.

A. For the Formidable to have steered, to have got into the Admiral's wake.

Q. Yes.

A. Half a point, or between that and a point, which would have encreased her distance by falling in a-stern.

Q. Could you not have gone faster?

A. Not faster than we did.

Q. Not by steering away a little from the wind; Did you ever set the Victory by compass?

A. I cannot say I ever did.

Q. Never?

A. I never did that afternoon Sir by compass.

Q. Were there any minutes kept on board the Formidable, of any signals or bearings of the Admiral, or any thing about him?

A. Not about the bearings, but there was minutes taken of signals, and very incorrect ones which I am ready to explain.

Q. Who took them Sir?

The question repeated by Judge Advocate

A. Two midshipmen that were appointed for that business.

Q. Their names if you please?

A. Girard and Hoggart.

Q. Do you know where those minutes are?

A. No Sir, I never saw them after the battle.

Q. If you never saw them after the battle, how do you know they were incorrect?

A. From the Master's report to me, who wrote the log from them, and inserted them in immediately.

(The Court adjourned to the next day.)

Fourteenth Day, Jan. 22, 1779.

Captain BAZELY being called again, the President desired some of the Questions and Answers of the preceding day should be read, which were read accordingly.

When the Admiral proceeded to farther cross examine him.

The Admiral. Q. By whose nomination were the two midshipmen appointed to observe signals, and take minutes.

A. By the Vice Admiral's.

Q. Do you mean, sir, in time of battle, or in general?

A. The time of battle, sir—those two men that I have mentioned, with the assistance of another, whom the Vice Admiral appointed his aid de camp, Mr. Montagu.

Q. Had not the midshipmen that were appointed

pointed to take the signals the best opportunity of observing them exactly?

A. That I cannot answer to.

Q. Did they acknowledge at any time, and when, that their signals were erroneous?

A. They never did to me, nor I to them.

Q. Was it the master that took upon him to enter the signals in the log book different from the minutes of those appointed to observe them?

A. I don't know that the signals in the log book differed from the minutes taken by the midshipmen, but that I observed there was very little mention of signals in the log book.

Q. Pray can you state to the Court the difference?

A. I cannot immediately. I wish to explain myself.

President. Q. Do you wish to explain yourself what you meant by the incorrectness of those things—do you wish to explain that to the Court?

A. Yes, sir.

Q. Please to explain.

A. Meaning an omission in their not being entered full; no erasements or alteration to my knowledge in the log book; there is the log to see if there is any interlining or any addition in it.

Q. Can Capt. Bazely take upon him to say that the log book and minutes differed or agreed as to signals?

A. I cannot say.

Q. Does Captain Bazely know where these minutes are?

A. Since leaving the court yesterday I have enquired of the mates and different officers of the Formidable, if they knew any thing of the minutes of the signals taken before the day of battle; and after, to the arrival of the ship in Plymouth, and I am informed that a Mr. Perry, late midshipman of the Formidable, now lieutenant of the Triumph at Chatham, had taken those minutes with him out of the ship, which I never knew or heard of till this morning.

Q. Was he told this morning or yesterday when they were delivered to Mr. Perry?

A. Yes.

Q. When?

A. When Mr. Perry was appointed to observe signals in the ship in the room of Messrs. Hoggard and Girand, who were appointed to do the duty as mates of the ship.

Q. Are the three gentlemen that Captain Bazely has named, that took the minutes, all here, sir?

A. They are here, and I believe the Vice Admiral intends to call those three gentlemen.

Q. In the morning of the 27th of July, how far was the Vice Admiral of the Blue to leeward from the Victory when the signal was made for ships to chase?

A. About half a mile upon the Victory's lee bow, and not quite a mile a-head withal, to the best of my judgment and recollection.

Q. Do you recollect what sail the Formidable was under, on the 27th in the morning?

A. Close reefed top-sail, fore and main top-mast, stay sail, and the fore-course.

Q. At the time the signal was made for the ships to chase to windward?

A. Upon the signals being made for the ships to chase to windward, the main sail was set, and two reefs let out of her top sails.

Q. You have said the Vice Admiral of the Blue and his division were in a proper situation and distance to have taken their station in a line of battle upon the larboard tack, had the signal been made for that purpose: I would ask you whether the Formidable and the rest of the divi-

sion could have got a head of the Victory without their making a board, or the Victory bearing down to leeward to them?

A. I apprehend the Formidable could not get right a-head of the Victory without making a board for a line to be completely formed in her station, without the Admiral had edged away for that purpose.

Q. Was not the Vice Admiral of the Red and his division considerably to windward of the Victory?

A. To the best of my recollection upon the weather quarter, and a stern withal of the Victory, three miles distant from the Formidable to the best of my recollection and judgment.

Q. Must they not have bore down likewise as far to leeward of the Vice Admiral of the Blue, and thereby have increased the distance of the whole fleet from the French?

A. Yes.

Q. When the signal was made for the whole fleet to tack together about ten o'clock that morning, did the Formidable tack directly when the Admiral tacked?

A. I think she did.

Q. You are not sure?

A. I think she did, to the best I can charge my memory.

Q. At what hour did the Formidable back her mizen top sail when drawing near the enemy?

A. I cannot answer particular to time.

Q. You have said the mizen top sail was backed to prevent getting into the Ocean's line of fire: how long did it continue aback?

A. Till she had passed the French line.

Q. Were the ships a-head of you when the mizen top-sail was aback joined to the center so as for some of them to be obliged to go to leeward out of the line, on account of some of the ships coming up a-stern pressing upon them, meaning a-head and a-stern of the Formidable?

A. To the ships a-head I cannot speak, to only one ship that passed under the Formidable's lee while engaged, or at least running down the French line?

Q. Do you know the ship that bore away under the lee of the Formidable?

A. I do not.

Q. Do you know what ship was next a-head of the Formidable during the action?

A. No.

Q. Did not you back your mizen top sail for the Ocean?

A. Yes, and as well for the ships a-stern to close. She was not a-head of us, but she was upon the lee bow.

Q. How many of the French ships did you pass a-stern of the French Admiral after you began to engage?

A. Do you mean the center Admiral?

Q. I mean the Admiral with the flag upon the main top mast head in the 100 gun ship?

A. I did not count the ships at all while we were running down the French line.

Q. May I ask where you was yourself, sir, at that time of running down the French line?

A. Upon the fore part of the quarter deck upon the star-board side mostly the whole time of action.

Q. Looking at the enemy?

A. Yes, sir, looking at the enemy as we passed along the line.

Q. How many three-deck ships had the French?

A. There appeared to me two.

Q. Were they tolerably near together?

A. That I cannot answer to.

Q. Can you inform the Court how many French Admirals were tolerably close together?

A. I cannot.

Q. Was the irregularity of the French line the cause of irregularity of distance at which you say the Formidable engaged different ships as she passed along the line, or did the Formidable sometimes bear away?

A. The Formidable did at one time during the action going down bear up a little, to avoid being aboard of one of the enemy ships, whose gib boom nearly brushed the weather leech of the Formidable's main top sail, and I thought we could not avoid being on board.

Q. Did that ship so near give a warm fire into the Formidable?

A. No; she appeared to be silenced before we reached her.

Q. Then was not the Formidable and the ships astern supported and succoured by the ships that had engaged those French ships before she came that length?

A. I certainly received less of the enemy's fire in consequence of the center and the Vice of the Red's division passing before along the French line.

Q. As you have said the Formidable wore after passing the rear of the French ships, and seeing the Admiral advancing towards the enemy on the larboard tack, and that the officers and men on board the Formidable were ordered to quarters, expecting to renew the battle when the Admiral came up, I desire to know whether the Formidable did not wear again without signal, and pass astern of the Admiral while his head was towards the enemy?

A. Yes.

Q. When you passed the Victory was the signal for the line of battle then flying?

A. I believe it was.

Q. When the Vice Admiral of the Red and his division made sail in order to get into his station, after being in the rear of the Admiral upon the starboard tack, did he not pass between the Formidable and the center division?

A. I do not recollect.

Q. You think you saw the signal for the line of battle on board the Victory as you passed her, can you say it ever was hauled down?

A. I cannot charge my memory.

Q. Don't you know when the signal for the line of battle was hoisted on board the Formidable?

A. I do not.

Q. Are you positive it was flying at five o'clock on board the Formidable in the afternoon?

A. I think it was, but I cannot speak positive to that.

Q. How do you know the time the Fox came to the Formidable, having before said you never observed time?

A. I imagine it to be near sun-set, sir.

Prosecutor. I don't remember he said he did not know the times?

Capt. Bazely. I cannot speak to time; if I could, I would explain myself to the Admiral's satisfaction. I could not speak to the time of particular circumstances the Vice Admiral asked me relative to the ship.

The Admiral. Q. What was the confusion you speak of on board the Formidable at that time?

A. Nothing more than what is natural to happen to a ship coming immediately out of battle.

Q. What time do you mean the confusion held?

A. The confusion and hurry the whole after-

noon to get the ship in a proper state to obey the Admiral's signal.

Q. When you beat to arms at two o'clock in the morning on the 28th, was it upon the approach of any ship to leeward of you?

A. No.

Q. Where was the Formidable at two o'clock in the morning in respect to the Admiral?

A. Astern and to windward withal.

Q. Did you see the Admiral's lights during the night?

A. Yes, most of the night at different times that I was looking for them.

Q. Was the distinguishing lights of the Formidable burning at that time?

A. No, they were not.

Q. Were there any ships but the Formidable and the French ships she saw in the morning of the 28th?

A. Do you mean any of the British ships?

Q. Yes.

A. I saw none.

President. Q. I think you said the Fox cheered the Formidable first, and that you was at that time on the fore castle.

A. I was.

Q. Can you take upon you to say there was no cheer from the poop or the quarter deck of the Formidable, at the time the Captain of the Fox delivered the orders to the Vice Admiral?

A. None that I heard or know of.

President. Q. I ask if the Formidable had been a ship in the condition you reported her, when the supposed French ship run away, would you have ventured to have pursued her, and upon a lee shore?

A. No sir, that would depend upon the distance I was from the land.

Q. But you have already said you would see her into port?

A. In the situation of the Formidable, in the morning of the 28th, I would not have hesitated a moment to have pursued her till she made the land.

Q. I will put the question otherwise: suppose you in the Formidable, and any French ship engaging together, you had received the damages you have already mentioned you had received, and the French ship run away from you, would you pursue her in that condition.

A. I would have pursued her till she made the land; I don't understand how far you call the lee shore distance—I call it a lee shore when the wind blows on it and I can see the land.

Q. I allude to the former question?

A. In the condition the Formidable was in, and stated to the court, I would not have hesitated a single moment to have pursued her, till I had seen her—

Q. Till you had seen her into port?

A. That would depend upon another thing, in respect to the clearness of the weather, and the situation and the class of the ship.

Q. You are asked at this time, if the Formidable had been in the condition you have reported her, when the supposed ship run away, would you have ventured to pursue her upon a lee-shore.

A. Till I had seen her into port; I should not have thought my conduct justifiable, if I had not in a single ship.

Q. I mean the condition she was when she left off beating on the 27th, when you brushed the mizen mast by the main yard, and was near being aboard of one of the ships.

A. She was not in a state to make sail.

President. If I have not explained myself I de-

fire

fire I may do it—I understood you before, you meant in case you and a French ship were engaging, and after you had received the damages you have mentioned on board the Formidable, the French ship not knowing the damages you received, run away, would you have pursued that French ship upon a lee shore, upon the 27th.

A. Knowing myself upon a lee shore, it must depend chiefly upon what coast I was going.

Q. We will put it upon the very coast we are speaking of, where the English fleet was then off?

A. I am no pilot upon that coast.

Q. Then you would not have done it?

A. I answered the question upon a lee shore—I do conceive in my first answer, respecting the state of the Formidable, when she came out of the battle, she was by no means upon a lee shore.

Q. Why was it proper to pursue her upon a lee shore?

A. If I was on a lee shore I would not have done it; if you allude to the former questions and answers, I would not have pursued her in a fleet.

Q. Would you have pursued her on the morning of the 28th, when the ships were flying from the Formidable upon a lee shore?

A. No, upon what I call a lee shore; I don't think it would be justifiable to run my head into danger.

Admiral Montagu. From the strange account Capt. Bazely has given us of the two gentlemen who took minutes on board the Formidable for the information of the Admiral and Captain, at the time of action—it has naturally led me to look at the Formidable's log-book, to examine their days works, and see whether there are any marks made of any signals made by the Admiral that day, or repeated, and upon opening the book, I find three leaves cut out after the account from the 25th to the 28th.—I should be glad to know if Captain Bazely can inform the Court how those three leaves came to be cut out of this book? That is the question. I see it is from the 25th to the 28th, and here is one leaf put in with a fresh tacking of thread, three cut out and one put in, which makes it come to the day after the action—then it goes on regularly with the rest.

Judge Advocate. Inform the Court how those three leaves came to be cut out of this book.

A. I do not know, so help me God—I hold a ship's log book sacred, and from what has been said with respect to the Robuste I would wish to be particular, and convince the Court and audience that I do not know, so help me God.

Admiral Montagu. Nobody accuses you, Captain Bazely; but it struck me to see the Admiral's log-book—the log-book of the Admiral's ship, with three leaves taken out at this juncture.

Capt. Bazely. There is a fair one, I believe; but when the log-book was called for, I desired that to be produced, which is the ship's rough log-book, in its original state, for it to be produced to the Court, and it was.—They kick them about the orlop, which is generally the case in a man of war: but that is the original state which I desired to be produced to the Court.

Sir RICHARD BICKERTON, Bart. Captain of the Terrible, sworn.

Prosecutor. Q. At what hour did you first see the French fleet on the 27th in the morning?

A. At five o'clock.

Q. Did they appear to you at any time that forenoon to be in a line of battle?

A. They did.

Q. At what time had they that appearance to you?

A. Soon after I tack'd.

Q. What time did you tack?

A. A little before ten. I must beg leave to observe when I came to range along the French, they were not in that regular line I saw them.

Q. What occasioned your tacking?

A. Agreeable to the signal to chace to windward.

Q. Do you remember a signal being made for some ships of the Vice Admiral of the Blue's division to chace that morning to windward?

A. I do.

Q. Do you remember the time?

A. About six o'clock some of them.

Q. For how many ships of the Vice Admiral of the Blue's division?

A. I think they were four, I am not certain.

Q. Do you remember whether there were not more than four that chaced, when those signals were thrown out?

A. I did not chace then.

Q. Was your signal one of the signals that was thrown out?

A. Not the first.

Q. Do you know the names of those four ships?

A. Two of them I do.

Q. Please to name them.

A. The Egmont and Robuste.

Q. Sir Richard, you have spoke of the Terribles signal being made in addition to the four, after the four, can you remember whether there was a sixth signal at the same time with the Terrible, that made six in the whole?

A. I believe it was the Worcester.

Q. Did this signal for those ships chacing cause that part of the Fleet to be dispersed and seperated from their flag and from each other?

A. It certainly occasioned them to seperate.

Q. In the morning of the 27th of July, was the Vice Admiral of the Blue with his division a head of the Admiral, somewhat upon his lee bow, and others somewhat to windward, or how otherwise situated?

A. I think the Vice Admiral of the Blue was a little before the Victory's beam to leeward of the Admiral, and a little before his lee beam the Terrible upon the Vice Admiral's larboard bow.

President. Was that signal that was thrown out for the six ships to chace to windward, a means of their coming to action sooner, or would it prevent their coming to action so soon as they otherwise might have done?

A. It was a means of their fetching farther to windward, and engaging more of the enemy.

Prosecutor. Q. Was any signal made for the whole division to chace?

A. I did not see it.

Q. When ships chace from different situations, and who differ in their rates of sailing, can they all come into a situation at one and the same time, proper for tacking?

A. I should think not.

Q. Was it not the Admiral's practice to make the signal for ships chacing to tack when he judged they ought to do so?

A. I do not remember it often made that cruize?

Q. Did the Admiral make such signal that morning for particular ships?

A. I did not see it.

President. Q. You did tack, I think you say?

A. Yes, I tacked.

Q. Then I suppose you tacked according to your judgment, as you say you did not see the Admiral's signal?

A. I cer-

A. I certainly did according to my judgment.

Prosecutor. Q. Does Sir Richard mean to say he tacked before the general signal for the whole fleet to tack together?

A. We tack'd a little before,

Q. If those six ships had not been taken from the Vice Admiral, might not the whole of his division have gone into action, together with their Admiral in a connected body, to have supported each other at the time the Vice Admiral himself did?

A. We certainly should have been more connected had we not chased?

President. Q. Was you close upon a wind when you attack'd the enemy when you first began to engage?

A. Close upon a wind with the first ship, but afterwards were obliged to keep away.

Prosecutor. Q. When your signal was thrown out to chase, was you to leeward of the Vice Admiral of the Blue, or to windward?

A. I think, as I observed before, we were upon his larboard quarter.

Q. Do you think ships proceeding along an enemy's line, scattered and separated from each other, are exposed to more or less damage from the enemy, than if a number of ships proceed connected together, so as properly to support each other?

A. I should think the more ships are together, the less damage each must receive.

Q. Did not the chasing ships, so far as you know, come into action separately, without being near enough to support each other, as far as you know?

A. There were three ships a-stern of me appeared to be pretty near together.

Q. Sir Richard Bickerton, do you remember the time when the Terrible, in the thick of the smoke from the Terrible and Formidable, ran close to the Formidable's stern.

A. I remember the Formidable coming across me when I was engaging the ship a-head of the Bretagne.

Q. Till the time that I am speaking of, was any other of our ships so near the Terrible as to afford support to each other?

A. I believe not.

Q. Do you know if part of the chasing ships of the Blue division passed a-head of the Vice Admiral, and joined the center division?

A. I do not.

Q. At the time you speak of, sir, when you was near to the Formidable, did you shoot a-head of her, or remain a-stern?

A. I remained a-stern for some time, but was afterwards obliged to bear up, to prevent being a-board her.

Admiral Montagu. Was the Formidable's mizen top sail a-back at this time?

A. I do not remember it was a-back at that time, but I saw it a-back.

Q. Did you see it a back before you shot a-head of her, or to leeward of her, and near being a-board of her?

A. I really do not know; it was in the heat of the action, and I was so taken up at that time.

Capt. Duncan. Q. Were any ships near you a-stern at that time?

A. I did not observe any: there was one to leeward near us.

Prosecutor. Q. In proceeding along the French line did not our ships go large?

A. They went from the wind.

Q. When you shot to leeward of the Formi-

dable, how many ships of the Vice Admiral's division then remained a-stern of him?

A. I know of none but those three that were chasing.

Q. Were they close up with him?

A. I did not take notice.

Q. After running to leeward to avoid going a-board the Formidable, did you shoot a-head of her?

A. Yes, upon her larboard bow.

Q. Did you find any other ship there near to her?

A. The America was very near to me.

Q. Did you and the America go on a-head together?

A. I know nothing of the America: I kept on myself—(the smoke was so thick) but did not go far a-head.

Q. When you passed the Formidable, and spoke of seeing the America, was the America then upon your weather or lee bow?

A. On the lee bow, I think.

Q. I think Sir Richard Bickerton, you said you did not find the French fleet in so regular a line when you run along the line as they appeared to be at first: I would now ask you, if, when you proceeded along the enemy's line, if it was not perfect, was it any other than might be expected after having engaged with a number of ships that had passed before?

A. I really do not know.

Q. How far do you think the British fleet was extended from van to rear at the beginning of the engagement, after the ships had chased?

A. The Admiral and the Vice Admiral of the Red appeared very well together; the chasing ships might be about seven or eight miles distance.

Q. From what?

A. From the Admiral.

Q. In what part of the French line did you first begin to engage?

A. The third ship.

Q. As Sir Richard Bickerton describes the van and center divisions being pretty well connected together, was not the Admiral of those divisions well supported with the whole force of their respective divisions?

A. In the great distance I was from them I should think they were.

Q. By the description you have given of the separation of the Vice Admiral of the Blue's division, did he go into action equally well supported with the rest of the flag officers?

A. I believe not.

Q. Was he so during the whole, or any part of the time he was in action?

A. It is not in my power to answer that.

Q. When Sir Richard Bickerton had passed the rear of the enemy's fleet, did he observe where the Admiral with the centre division was, and where the Vice Admiral of the Red, with his division, was?

A. They were a head of the Terrible.

Q. Which way were they standing?

A. Towards the enemy.

Q. At what distance were they—the body of them?

A. I cannot say.

Q. If you cannot speak to the distance, sir, I only ask, did the Admiral, with the ships with him, that had passed the rear of the French fleet—were they so near to the enemy, as to be ready immediately to renew the fight, when the Vice of the Blue came out of it, as to countenance and support him, while he remained engaged with the few ships

ships that were with him, after the Admiral had passed the whole?

A. My ship having just come out of action, and greatly disabled, I was anxious to get her into order, to renew the attack, and therefore I took little notice of the enemy at that time.

Q. From the very brisk fire kept up by our ships that got into the engagement, do you not think that the French ships must have suffered in proportion with ours?

A. Some of them appeared to be disabled, others did not.

President. Q. Does Sir Richard Bickerton know the defects of his ship, after he came out of action?

A. Yes, I believe I can recollect some of them.

Admiral Montagu. The material parts, the masts and yards?

A. The fore yard was shot half through, about 15 or 16 feet from the larboard yard-arm, the main mast had two shot lodged in it, one about 10 feet below the hounds, and one seven or eight feet, it may be more, above the quarter deck; the main top mast had a shot through it, about a 11 feet below the hounds, very large; the mizen-mast, a large shot, about a third through it, and carried away about a third of it, 10 feet above the poop; the mizen yard about 12 or 14 feet from the barrel, much wounded; the rigging, in general, was very much cut; the main top sail and fore sail were cut to pieces, and the other sails damaged.

Admiral Montagu. Q. You just now said, the French fleet were some of them disabled, were the English ships that had been engaged, in a condition to renew the attack, at the time the Vice Admiral of the Blue speaks of, which was immediately after he came out of action?

A. From what appeared to me, I do not think they were.

Q. Was your ship in a condition?

A. She was not.

Prosecutor. Q. I would ask Sir Richard Bickerton this question; that, suppose he had engaged along side of a ship upon the same tack, not passing upon the contrary tack, was his ship in a condition to have continued the action with any ship that might have been along side in that situation, if he would not have continued the action in that situation?

A. I should certainly have continued the action so long as I could.

Q. I would ask Sir Richard, if his ship was then in such a condition that he was under a necessity of quitting the ship he might have been so engaged with?

A. No—I certainly should not have quitted the ship, while I had steerage-way, and had the least command of my ship.

Admiral Arbuthnot. Q. You have described the Vice Admiral of the Blue to be to leeward of the Admiral, on the morning of the 27th, if the Admiral had then bore down in the Vice Admiral's wake, to form the line, as the wind then was, do you think the enemy could probably have been brought to action on that day? I mean as the wind was, just about the time your signal was made to chace to windward.

A. The answer to that question must depend entirely upon the enemy; but I believe if the Admiral had bore down, that we should not have brought them into action, as they always avoided coming to action.

Admiral Montagu. Did not you come into action as soon, although you chaced, as you would have done, provided the Admiral had made a signal for the line of battle, and you had not chaced.

A. I believe sooner.

Prosecutor. Q. Do you Sir Richard remember with what part of the French fleet the Formidable

began action, was it a head or a stern of the French Admiral?

A. I never saw the Formidable in action, till she began with the Bretagne, she might have fired into the ship a head of the Bretagne, or reserved her fire for the Bretagne.

Q. Where did the Victory, do you understand, begin action?

A. I really cannot tell.

Q. Then if the Formidable did begin action with the ship next a head, or the second ship next a head of the French Admiral, suppose the Victory had been in a line a head of her, might they not have began the action successively in the same place?

A. If the Victory had been there, there is no doubt she would have engaged where the Formidable did.

Admiral Montagu. In the situation you was, could you be a judge at a distance you was from the center and van, whether they were properly supported or not, and how they engaged, or with what ships?

A. It was impossible.

Prosecutor. Q. If the Victory did not begin close action as far a head from the French, as the Formidable did, would she not have been in a more advantageous situation for attacking the enemy, if she had been in a line with the Formidable.

A. I have observed before, if the Victory had been where the Formidable was engaged, she would have engaged as the Formidable did.

Prosecutor. I beg to ask Sir Richard Bickerton, as an old officer, and one that knows the service well, whether do you understand, that a flag officer of a division has a right to call ships in from chacing, after the Commander in Chief has sent them out to chace, by signal, without the Commander in Chief first makes the signal for forming again?

A. I have never seen it done without the Commander in Chief.

Q. I would ask Sir Richard Bickerton his opinion, whether, from the discipline of the service, such flag officer of a division has a right to do so?

A. I do not know, I have never seen it done.

Admiral Montagu. Q. Then I beg leave to ask Sir Richard Bickerton, as an old officer in the service—In the situation the French fleet were then in, and the wind came so far favourable as to admit of the British fleet to bring them to action—although your signal had been made to chace, and no object in view but the French fleet, do not you think, as an officer, it was your duty to return to the British fleet, and get into your station as soon as possible.

A. I think I did my duty when my signal was made to chace to windward. Four ships were ordered to chace before me. I then mentioned to my officers this was meant to bring the enemy to action at all events, therefore I should carry a prest up sail, which I did, and a little before ten we tacked, at the same time the wind had shifted two points, which brought the headmost ship of the enemy's van very near a-head of us. The Admiral about half past eleven began the action; the second ship of the enemy had passed him I believe, therefore I thought it was best for me to take the line, and begin to engage as soon as possible when the signal for battle was thrown out.

Prosecutor. Q. I would ask Sir Richard Bickerton whether, by the answer he has given, he meant to say he thought it his duty to go into action as soon as he could, in preference to any thing else under that signal, and that he did do so?

A. I have observed before, I thought it my duty to go into action.

Q. I would ask Sir Richard Bickerton, does he think the Vice Admiral of the Blue was authorized to call the chasing ships in on the 27th of July, on pretence of taking their stations in the line, the Commander in Chief having made no signal for the line?

A. I cannot say.

Prosecutor. Q. After you had passed the rear of the enemy's line, did you take notice of the Formidable?

A. No.

Q. When you first saw her afterwards, was it while she remained engaged, or after she came out of the engagement?

A. I took notice of the Formidable when we bore up to get clear of her, and got on her larboard bow.

Prosecutor. I am speaking after you got out of the action?

A. I did not then take any notice of her.

Q. Do you remember when you first took notice of her after you came out of action, she being a flag of the division you belonged to?

A. About three o'clock in the afternoon I think, but I cannot be certain.

Q. Sir Richard Bickerton said he took notice of the Admiral as soon as he himself came out of action, but was not able to mention the distance he was at. I would ask Sir Richard Bickerton if he remembers that time when he saw the Admiral, whether the signal for battle was hauled down or flying?

A. I do not.

Q. Where was the Vice Admiral of the Blue when you first saw him, as you suppose, about three o'clock, where was he in respect to the rest of the fleet?

A. I really cannot tell.

Q. At what time do you recollect seeing him, when you can give an account of his situation?

A. After I wore, I think I went to windward of the Vice Admiral of the Blue, and got into my station.

Q. I think you have said the Admiral, when you first saw him, was standing towards the enemy?

A. He was.

Q. Did you see him wear again and stand to the southward?

A. I did not.—I beg leave to make an observation on the defects of the ship; I forgot to mention I had five shot holes between wind and water, by which I made a regular water, and occasioned me to remain longer upon that tack, by which I could not see the Admiral.

Q. Do you mean to say you continued to lay upon the starboard tack?

A. Yes, for a little time.

Q. While you continued upon the star-tack, did you pass the Admiral?

A. I did.

Q. Did you pass to windward or leeward of him?

A. To leeward I think. I believe I cheered him.

Q. Where was the Vice Admiral of the Red, with the ships of his division, when all firing ceased?

A. I believe a little to windward of the Admiral on his bow, but I am not certain.

Q. Did you observe when the French broke up their line of battle, and began to stand to the southward?

A. A little after I wore.

Q. Was it not the Vice Admiral of the Blue and part of his division that last came out of action, or what other ships if not them?

A. I know of no other.

Q. Were they the last that came out of action?

A. Yes.

Q. Can you tell what ships?

A. The Terrible, the America, I believe the Elizabeth, the Robuste, and Worcester; I cannot speak to any other.

Q. While you was standing with your head to the southward, was the French fleet a-stern?

A. We lay too, we did not stand to the southward, and I thought the French fleet were a-stern of us; I am not certain whether we were coming to or falling off.

Q. Did the Admiral, with the rest of the fleet, stand to the southward all the rest of that afternoon and night?

A. They had their heads to the southward.

Q. Did the Vice Admiral of the Red and his division bear down into the Admiral's wake that afternoon?

A. I did not observe it.

Q. Did you not see them in the Admiral's wake any part of that afternoon?

A. No, I do not recollect it upon my word.

Q. I would ask Sir Richard Bickerton if he ever knew, in the course of his service, that whilst the signal for the line of battle a-head was flying, the Commander in Chief to order the van or rear division to take the place of the other in the line, without being satisfied one of those divisions was disabled from taking their proper station?

A. I have not.

Q. Which division, according to the line of battle, was to lead upon the starboard tack?

A. The Vice Admiral of the Red.

Q. Does Sir Richard Bickerton remember the signal being made for the ships to windward to bear down with a number of particular ships, pennants flying?

A. I do.

Q. Was the Terrible one of those pennants?

A. Yes.

Q. Do you remember the first time I saw you after that, your expressing a little concern that it should be thought necessary to make your signal, and that I replied to you, I repeated the signal from the Admiral?

A. I believe so.

Q. Did you at the same time inform me, that when you got down among the ships, you was not able to keep your station exactly, your rigging and sails not being completely refitted, and that other ships called to you, to keep out of their way, or something to that purpose?

A. I believe I do.

Q. About what time was it you bore down, in consequence of the signal you have been speaking of?

A. A little before seven, I think.

Q. Whereabouts was the van, the leading ships of the French, that were forming a line to leeward at that time?

A. Before the beam—I think so.

Q. What sail had the Victory set, any time that afternoon, when you look'd at her?

A. I do not recollect.

Q. Do you know of any signals being made by the French fleet that night, and at what time?

A. There were some false fires made about 11 o'clock that night, I think.

Q. Was it perceived at that time, that they bore away?

A. I did not observe them, because I kept my men to quarters all that night, and had lights on the lower gun deck.

Q. Were they pretty near you during the time the false fires were made?

A. We judged them about dusk to be about three or four miles distance.

Q. What

Q. What part of the French fleet were within sight the next morning?

A. Three sail.

Q. Were they line of battle ships, or frigates?

A. I took one to be a line of battle ship, the others, two frigates.

Q. How near do you reckon the nearest was from the Terrible?

A. Four or five miles.

Q. In what position was they?

A. They had their heads to southward.

Q. In what position was they from the Terrible?

A. Upon the larboard quarter.

Q. At what time was this, when you first saw them?

A. Soon after dawn.

Q. Which way did they steer?

A. To the southward.

Q. Did they crowd sail, and bear away more, afterwards, or how?

A. They bore away, as soon as they discovered us.

Q. Were those ships pursued by the British fleet?

A. They were not, that I saw; there were signals out for some ships to chase, which were soon after hauled in again.

Q. Was any other part of the French fleet seen that morning?

A. Not as I know of—I did not see any.

Q. Do you know of a signal being made by any ship, of having seen them?

A. I do not.

Q. Suppose the British fleet had chased those three ships, and supposing the rest of the French fleet to have been to leeward, was there not a probability of our undamaged ships coming up with either those three ships, or the disabled ships of their fleet, if the rest of the fleet left them, or if they had stood by them, might not another engagement have been brought on?

A. I think not.

Q. What sort of weather was it in the morning of the 28th?

Court. Look at your log, Sir Richard.

A. I think it was rather hazy.

Q. As to wind and sea?

A. There was not much wind, there was a popling sea.

Q. If our undamaged ship, Sir, had chased those three ships, what is your reason for supposing there was no chance for coming up with them?

A. There appeared to me but very few of our ships fit for chasing.

Q. Do you suppose there was none?

A. There might be some, to be sure.

Q. You suppose, Sir, two of those ships were frigates. Had not we four frigates with us?

A. We had.

Q. Some of them upon copper bottoms?

A. Yes.

Q. Sir, it being the middle of summer, short nights, and not much wind at sea, but a popling sea, do you apprehend it would have been attended with any immediate and imminent danger, if the British fleet had pursued, at least so far, as till we had seen the French ships into port; no ship in the fleet having lost her masts?

A. We did not see the French fleet.

Q. It is upon a supposition they were to leeward of you.

A. I should think, carrying a fleet so disabled as that was upon a lee shore, must have been attended with great danger.

Q. How was the wind?

A. It was about West, and West North West, if I recollect.

Q. Was the wind at West, or West North West, and moderate weather, if the fleet had gone so far

as to come within sight of Ushant, would that have been running the fleet into imminent danger upon a lee shore?

A. I do not think it would, because the channel was open.

Q. What distance was you from Ushant, at noon, the 27th and 28th?

A. Ushant bore east of us on the 27th, thirty seven leagues.

Q. What day?

A. The 27th.

Q. On the 28th?

A. About East and by North, 34 leagues.

Q. Is that, Sir, a corrected back reckoning, or the current reckoning at the time?

A. The master's reckoning at the time?

I will not trouble Sir Richard Bickerton any more.

Admiral Arbuthnot. Q. I think you observed the French ships to steer to the southward?

A. Standing to the southward.

Q. I say standing to the southward, the medium of the two days is about East half North, from Ushant, do you think, that if you had steered that course for Ushant, there would have been a probability of seeing the French fleet on the 28th?

A. I should not have steered that course.

Q. But if you had?

A. If I wanted to see the French, I should have steered East South East, but for Ushant.

Q. I think you have observed the three French ships were standing to the southward—the wind, the medium of those two days, about East half North from Ushant; do you think, if you had steered that course for Ushant, there would have been a probability of seeing the French fleet upon the 28th?

A. We certainly might have seen them, but I think it would have been at a very great distance, supposing the French fleet had not run away in the night, but have continued to lay too to leeward, as they were the night before.

Prosecutor. He did not say they run away.

Admiral Montagu. Jogging on with the English fleet in a parallel line—Do you not think Admiral Keppel would have attacked them in the morning, although he did not pursue them, or think it proper to chase the three ships seen in the morning?

A. I do most certainly think that he would.

Q. Sir, you are an old officer, you have been more than once in action, you served under a very brave man, Admiral Boscawen; the Admiral now here trying, is charged with negligently performing the duty imposed upon him; I beg you will acquaint the Court if you know of any instance, on the 27th of July, in which he was guilty of such neglect, or did not perform the duty imposed upon him?

A. Ever since I have had the honour of knowing and serving under Admiral Keppel I have had the greatest esteem for him, and the highest opinion of him as an officer, and I have so still; but as I have been giving my evidence upon facts, I think my answering that question would be judging of them, which I have no right to do.

Q. Then I am to suppose you do not know any act of the Admiral's, that he neglected or did not perform his duty; I don't ask your opinion, but I speak of what you saw with your own eyes?

A. I do not.

Cross Examination.

The Admiral. It gives me great pain to ask to retain the Court beyond the usual hour of adjournment; but the three leaves, containing the narrative of the 26th, 27th, and 28th of July, being taken from the Formidable's log book, and sup-

supplied by others, carries with it so extraordinary an appearance, that I trust the Court will not think me unreasonable in begging the master may be immediately called in to explain it.

Prosecutor. I hope I am not to be interrupted in the course of my evidence.

The Admiral. In a case like this, where there is such a just ground to suspect unfair and dangerous practices, I hope the Court will think it necessary for the attainment of justice, that an immediate examination should be entered upon, to prevent all intermediate communication.

Admiral Montagu. I move the Master be ordered to attend here to-morrow, in case the Court should think proper to call him, and in the mean time let us debate upon the Admiral's question; and we will depend upon the Vice Admiral's honor not to have any communication with him.

Sir Richard Bickerton ordered to attend at ten to-morrow.

Judge Advocate. The Court agrees upon this to order the Master to attend to-morrow, the Master not being here, in the mean time to debate upon the Admiral's question.

Adjourned till the next day, being four o'clock.

Fifteenth Day, Jan. 23, 1779.

Sir RICHARD BICKERTON cross examined by the Admiral.

Q. I would ask Sir Richard Bickerton upon what tack the French were when they appeared to be in a line of battle at ten o'clock on the 27th?

A. The larboard tack.

Q. Did you lose sight of them any time afterwards?

A. No.

Q. Did the Formidable fetch in a head of the Terrible with the French fleet?

A. She did.

Q. How many ships of the rear of the French fleet had the Formidable to pass when you was compelled to bear up and go to leeward of her?

A. I think there were three of them together.

Q. Did the ships of the Vice Admiral of the Blue's division he has named to be astern of the Vice Admiral of the Blue, come out of action nearly at the same time with the Terrible?

A. I cannot really say.

Q. Can you inform the Court at what time the Terrible did come out of action?

A. About half an hour after one, or rather sooner.

I shall not ask Sir Richard Bickerton any more questions.

Prosecutor. Mr. President, sir, the cutting the leaves out of the Formidable's log book is a fact which I was totally ignorant of till it was observed yesterday by a member of the Court, nor could any person be more astonished than myself: it is my anxious wish to have this matter fully investigated, and for that purpose I desired the Master of the Formidable, and the Mate who made the entries in the log book, to attend this morning, and that in giving their evidence upon this point they may be put to the severest test; I desire they may be examined by the Court and Admiral Keppel, without any previous questions from me.

WILLIAM FORFAR sworn.

President. Q. You have already been sworn in this Court relative to your log book?

A. Yes.

Judge Advocate. You have delivered in a log book now upon the table, and you have been already sworn it is the ship's original log book kept from day to day, and it is without any alteration or addition made so far as respects the 23d to the 30th of July, both days inclusive.

The Admiral. My reason for troubling the Court yesterday with the request the Mate of the

Formidable might be yesterday examined concerning the state of his log book, was to prevent any intermediate communication between him and others upon this subject: I must therefore ask the Master who was the person that first told him that the Court had discovered any extraordinary appearance in the log book?

A. I heard it in a shop yesterday; a woman in the shop telling another person that there had been some leaves tore out of the Formidable's log-book, which was the first I heard of it.

Q. Had you any conversation with any body, and whom, touching the log book, before the Court closed yesterday?

A. There were several, I don't exactly know their names, that asked me relative to the log-book.

Q. At what time was it those questions were asked you by those people?

A. When I heard of the log book being called in question, I came into Court on purpose to be examined, if I had been called; I came in about one o'clock I fancy, or thereabouts, it might be two—it must be two.

President. Q. Was you in the witness's room?

A. Yes.

The Admiral. Can you name nobody that spoke to you before you went into the witness's room?

A. As I was coming along I met Mr. B. Master of the Foudroyant, who told me I should be wanted; I said, Very well.

Q. Did any body else besides the Master of the Foudroyant speak to you upon it?

A. No, not till I came into the Examining-room.

President. Q. Did any body speak to you in the Examining-room?

A. I think Captain Walsingham came in; he said he supposed I was there on account of the log-book. I answered, Yes.

Q. To whose house did you go after the Court was up?

A. I went to the house next door to the Vice Admiral's, where we generally resort; the officers sleep there.

Q. Do you live there?

A. I don't sleep there; I have sometimes, but did not last night.

Q. Had you any discourse about the log-book after the Court broke up?

A. Yes.

Q. With whom, Sir?

A. Captain Bazely.

Q. Does Captain Bazely live at that house you went to, when the Court was up?

A. Yes Sir, he sleeps there.

Q. How long did you remain at Capt. Bazely's house, before you went to Sir Hugh Palliser's?

A. I cannot justly say—not long—perhaps half an hour.

Q. How long did you stay at Sir Hugh Palliser's?

Prosecutor. I can save the troubling the Court, by admitting I talked to him, and enquired about it.

The Admiral. I thought the Vice Admiral of the Blue required the man might be examined in the strictest manner upon it, or I would not have troubled the Court with it.

Judge Advocate. How long did you stay at Sir Hugh Palliser's?

A. I cannot exactly tell, it might be an hour, or an hour and a half.

Q. Who was present at the time.

A. Almost all the officers, I believe, that were on shore—the three lieutenants, and none but Sir Hugh's family.

Q. Name as many as you can.

A. Capt. Bazely, Mr. Waller, the second Lieutenant, Mr. Dickinson the first Lieutenant, Mr. Hills,

Hillis the third Lieutenant; Mr. Meredith, the Lieutenant of Marines, and Mr. Holm, the Lieutenant of Marines, both of them; Mr. Thomas, and Mr. Hartwell, and the two lawyers, I don't know what their names are.

Q. Do you know the names of those two gentlemen?

A. I don't know their names—I believe I can tell them when I see them—Mr. Ashley, I think, is one, and Mr. Hargrave, I think, or some such a name.

Q. Were any questions put to you about the log book?

A. Yes.

Q. When was the account of the 25th, 26th, and 27th of July entered in the Formidable's log-book—what is there now?

A. The 25th and 26th were entered the days of the logs being taken off from the log board—they were taken from the log board.

Court. Q. Do they now stand in that book?

A. They stand in my book, to the best of my knowledge—that log book—(pointing to the original log book on the table.)

Q. The 27th, Sir,—when?

A. The 27th was not entered in that book for a day or two after.

Court. Had not you better refresh your memory with the sight of the log book.

A. I will thank you for it, when I come to be asked questions—I am very clear of the 25th and 26th.

Admiral Montagu. The 26th is on a new sheet, the 25th upon an old one, then a sheet is cut out, and the 26th and 27th were entered upon a new sheet.

A. Yes, they were so.

Q. You have said they were put down on the days, the 26th on the 26th, and the 25th the 25th.

A. Yes, Sir.

Q. When the 27th?

A. Not in a day or two, it could not be above two days. I believe it was put in the 30th, to the best of my recollection.

The Admiral. Q. What was the meaning of that delay?

A. I took it from the log board upon a sheet of paper, to shew to the Captain and Admiral, before I entered it in the log book.

Q. Was it approved of?

A. What I took off was approved of.

Q. Without alteration or amendment?

A. There was something added to it by recollection—on recollection, what we had omitted was added afterwards.

Q. Do you recollect what they were?

A. I do not exactly recollect what they were; it was with respect to signals and time, I believe.

Q. Were there any minutes of the signals taken by any body, that this log book was copied from?

A. There was before we came to action. None that I saw except by recollection.

Q. Are there more than one log book?

A. Yes, I have another here.

Q. Is that the same as the one upon the table?

A. I believe exact, Sir, except three ships, whose signals were made to chase, in the morning of the 28th, the Capt. asked me afterwards about it—that is interlined in this that I have with me, otherwise it is exact, to my knowledge—that is the reason I gave my oath to the book upon the table, but I could not to the one now with me.

Q. When was that interlineation?

A. I cannot pretend to say.

Q. I don't mean to a day.

A. I will tell you Sir—about the time or before, I believe it was about the time we came to Spithead—it could not be more than a day or two, before or after..

Q. And that is not in the log book on the table?

A. I believe it is not in that, Sir.

Q. Do you know who cut the original entries out of the log book, of the 25th, 26th, and 27th?

A. One of the Mates, Mr. Winckworth.

Prosecutor. The Master has not yet said there were entries in the leaves that are cut out.

Court. He has not been asked yet.

Court. Q. What was the occasion of those leaves being cut out?

A. One that I saw cut out he had spilt some ink upon it.

Q. Who is he?

A. Mr. Winckworth, one of the Mates—that was tore out.

Q. When was that tore out?

A. To the best of my knowledge the 25th or 26th; it was the day of action, or the day before that; I am not sure which it was—it was before the action I know.

Q. Do you know when the rest of the leaves were torn out?

A. I did not see the rest tore out, I saw that tore out; he was tearing them out; when I came down, he told me had done it.

Admiral Montagu. Take the log-book before you and recollect yourself; the three leaves that are cut out are these; the 25th remains as it was ab origine: then here is the 26th, 27th, and 28th cut out. Now the 27th and 28th could not be cut out before the day of action, because the 27th was the day of action?

A. They were never put in I believe.

Q. You did not put that which remains in there after it was torn out?

A. There was nothing wrote upon it.

Admiral Montagu. I will convince you that they are wrote upon; for besides the hour of the day, there are words to be read. I desire him to take his log book, and look into it, and see if there is not writing as well as the hour of the day upon the 27th?

A. I know there is, sir.

The original log-book placed before the witnesses.

Court. Relate what you know of the matter.

A. To the best of my remembrance, when I came down he told me had ruled one of the leaves for two days works, and it would not contain it; so he put all in one; it was the 26th, the other he omitted putting in the minutes of the Midshipmen.

Q. The Midshipmen that were to take notice of the signals made?

A. Yes, sir; there were two of them; he had not put them down against the hour, that he told me was his reason for tearing them out.

Q. Is that all?

A. It is all I have said; the other he spilt ink upon.

The Admiral. Q. Does he mean relative to the minutes of the signals of the 27th and 28th?

A. The 27th there was nothing wrote upon the one that was ink'd at all.

Q. Did the Mate shew you those minutes?

A. To the best of my knowledge I gave him the book, and he wrote the log upon the leaf before I came down.

Q. Did you see the minutes that he wrote it from?

A. Yes, the log-board I saw before he took it off upon the book?

Q. Did you see the minutes?

A. Yes.

Q. Do those leaves so wrote agree with the minutes?

A. These do. (taking hold of the original)

Q. Does Mr. Forfar know what became of those leaves that were cut out of the book?

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A. No,

A. No, they were thrown away I believe.

Q. Do you know where the original minutes, from whence the signals in the log book were taken—where they now are?

A. No.

Q. As the days logs of the 27th and 28th were not entered till the 30th, how could the Mate have entered them before you went down on the 26th?

A. He took them off the board upon that paper (putting his hand on the original) before I came down.

Q. Did the board continue marked from the 26th to the 30th?

A. No, I took them upon a piece of paper when he had spoiled this. (pointing again to the original) I took on a piece of paper.

Q. Did you ever go to any Masters of any ships in the fleet under my command, and ask to see their log-books?

A. No.

Q. Did you not ask for Mr. Reed, the Master of the Queen, to see his log-book?

A. I went on board the Queen, and he was writing his log in his place, and I looked at it.

Q. My question was, Whether he did not apply to the Master of the Queen to see his log-book, and compare it with the original?

A. I don't remember I asked him any thing at all about it; it was much the same as my own I believe.

Q. Had you the Formidable's log-book with you when you were on board the Queen?

A. No, sir, no, never,

Q. Did he compare the entry from the sheet that was blotted, and see that it was fairly transcribed?

A. I do not recollect that I took any notice of the sheet.

Q. Was the log book now under your arm made since the cutting the leaves out of the one upon the table, or before?

A. This book under my arm was upon the first entering of the ship, and this was as soon as I could.

Q. Was the log book under your arm now made regarding them days since the cutting out of the leaves of the one upon the table, or before?

A. The book was made long before.

Q. Was the entry of the 25th, 26th, and 27th and 28th, copied from the original entry before the leaves were torn out?

A. No.

Q. I mean the book under your arm?

A. Yes, I mean it was copied from this.—(pointing to the original)

Court. Do you mean they were not copied till the 30th?

A. Yes, I mean this under my arm was wrote from this—is a copy of this. (putting his hand on the original).

Q. Not wrote till the 30th?

A. I think it was a day or two days after the action—the 27th and 28th. As to the other I am not clear.

Court. Q. Mr. Forfar, after the action was over, did you see the minutes kept by the Midshipmen stationed for that purpose on the poop?

A. Them that were made before the action I saw, but there was none made during the time.

Admiral Montagu. Q. From the morning of the 27th till you left off, after the engagement was over, I ask you, did you see the minutes kept by the Midshipmen upon the poop, I don't care whether made before, in, or after the action?

A. Yes, I saw the minutes. After the action

began there was none taken; those that were made before the action I saw.

Q. Had you those minutes in your possession?

A. Yes, at noon I had them; after the action the Midshipmen gave me the book.

Q. Did you shew those minutes to the Captain, to know if he approved of them?

A. Not till I inserted them in the paper that I took the log on.

Q. Did not you tell the Captain that the minutes taken upon the poop were erroneous?

A. No, I told him they were not all put down; that the Midshipmen had taken no notice from the time the action commenced.

Q. How do you know that they were not all put down?

A. By seeing the book and recollecting what was done.

Admiral Montagu. If they missed doing it, it is just the same as putting down too much or putting too little; they are not just.

Q. Did you order the minutes to be entered upon the log-board, or did you make any alteration in the minutes, they being erroneous, before they were entered upon the log-board?

A. They never were entered upon the log-board?

Q. Not as minutes?

A. No, not in general.

Q. Not of the day of action?

A. Not upon the board.

Admiral Montagu. Is it not usual for the Mate of the watch at sea to mark the board every hour, and to put against the remarks such transactions as have happened during that hour?

A. It is customary; but in a fleet I apprehend the signals are so many, that the board will not hold it. We had two mates that had never been in a man of war before, and were not so expert at marking the board as I could wish; and I took it from the Midshipmen's minute-book.

Admiral Montagu. There is but one remark of the transactions of the fleet that day?

A. The Mate entered the Midshipman's minutes upon the log-book.

Admiral Montagu. Q. Then how comes it those minutes did not appear that the Midshipman took of those days works?

A. The only minutes that he took of that day I believe was in the afternoon of the 26th—which was the 27th when the ships chaced, and in the morning of the ships chacing again; and I do not believe any more were taken—I do not recollect any more that were taken.

Q. From what book did you take your day's work, in order to work your reckoning?

A. From the board generally.

Q. Did you take that every four hours off the board, or did you take it off at mid-day?

A. I generally worked off my day's works, the bearings of land in the morning about eight o'clock, for fear I should be asked any questions by the Captain or Admiral?

Admiral Montagu. You have said that two of the Master's Mates never had been in the King's service before, as Mates, and therefore you was fearful they were not so expert as you could wish in marking of the log board, or writing down in the log book, as those Mates were who had been long in the service. Did those two Mates, or any of the Mates on board of you, consult with you before they entered upon the log-board the transactions of the day?

A. I generally examined the board in the morning when I came upon deck, to see what had been done in the night: if I saw any thing I disapproved of, or which I thought wanted correcting, I sent for them and pointed it out to them.

Q. Did you give any orders, or point out any thing

thing that was wrong in that board to either of the Mates during the 27th or 28th of July?

A. I don't recollect particularly I did either of those two days.

The Admiral. Q. Does he take upon him to say there were no minutes kept of the signals between the time the action ceased and dark?

A. I saw none from the Midshipmen.

Q. As the Midshipmen were appointed to observe signals, and enter them in a book, why were those entries discontinued on so important a day as the 27th?

A. I can give no other reason than they were employed in other things; they were almost the only Midshipmen we had to depend upon; they were employed in other things.

The Admiral. Mr. President, I shall ask no more questions concerning the matter; but I cannot help expressing my surprise that the Midshipmen should only take down the signal to chase, which the prosecutor dwells on so much, omitting all the others upon which they were called together again during the rest of the day; and I have only one more observation to make upon the accuser's address to the Court. His offer was intended to carry the appearance of candor when he requested the Master might be exposed to the strictest examination by the Court and me, without any previous questions by himself; whereas it now turns out just as I expected yesterday, when the Vice Admiral resisted my application to call the Master yesterday—that he has been previously examined already by Sir Hugh Palliser and his friends.

Court. Were all the transactions entered by recollection that the Midshipmen omitted?

A. Yes, as far as we could recollect we entered them.

A Member of the Court. There is not one in the log book.

Prosecutor. The question was asked if he was here. I said I did not know that he was, and I wished the Court to take it upon them to order him to attend.

The Admiral. The Prosecutor desired he might not be interrupted in the course of his evidence; those were his words when I moved the Court.

Prosecutor. As to examining the Master since that, it was very natural for me to send for him, to know what was the cause of the leaves being missing.—Mr. President, the postponing the examination of the Master yesterday was the act and proposition of the Court before I said any thing. As to my speaking to the Master since that time about cutting out the leaves, it was very natural that I should make an enquiry into a fact which I was before so totally ignorant of till yesterday, and so much surprized at. I shall continue to give the Court the utmost information and satisfaction upon that point; and for that purpose I have sent expresses to endeavour to find the succeeding Midshipmen that were appointed signal Midshipmen, and the one appointed signal Midshipman at that time is supposed to be somewhere in a tender in Wales, or may be on board the ship he belongs to; I have sent expresses each way to endeavour to get him, and if he has the original minute-book, that it may be produced.

The Admiral. I beg to refer to the memory of the Court whether the Prosecutor did not desire not to be interrupted in his evidence, when I begged the Master might be called in yesterday, though it was past the usual hour of adjournment before the Court interposed at all?

Admiral Montagu. Before I put my question I shall beg leave to know of the Court whether I may be permitted to read this day's work in the log book to the Court?

Court. If you please.

Admiral Montagu. Then, sir, you have said you did not dictate to the Mates what should be put in the log book either on the 27th or 28th of July. I desire to know if this account, now in the log book, be the Mate's own remarks or remarks of your's? And I will read them to you. It is from the afternoon of the time you left action to the 29th of July, by log the 27th, by the day the 28th, moderate and clear; at ten minutes past one P. M. firing ceased. We saw without a main yard and mizen mast one of their ships, that seemed to be otherwise very much damaged; which as soon as the firing ceased she bore away, and run to the southward, accompanied by a frigate. After we passed the last ship, we wore and laid our head towards them, as did Vice Admiral Sir Robert Harland. Soon after the French wore and laid their heads to the southward. We did the same, and repeated the signal for the line ahead a cable's length asunder, our sails and rigging being very much damaged. We hauled to windward to knot, and splice, and shift sails, most of them rendered unserviceable. At six P. M. signal made for us to bear down in the Admiral's wake; the Fox came under the stern and told us, the Admiral desired the ships of our division to bear down in his wake. At dusk the French formed in a line to leeward, extended parallel to us. The French Admiral and those nearest to him in the center, in the action appeared to be almost in the rear, being the ship that had suffered most. Fresh gales and squally with rain most part of the night, and exceeding dark. At three A. M. having knotted and spliced most part of the rigging, and shifted some of the sails, bore down into our station in the line, expecting to engage at day-light; but to our great surprise, at day-light we found the whole French fleet had stole away under cover of a dark night, except three sail, which remained in sight, and immediately crowded all the sail they could to the southward. It is uncertain whether those ships had or not observed the motions of the rest of the fleet in the night, or whether they were left to leeward, and by shewing lights to make us believe they remained in a line to leeward, as at dusk, and thereby deceive us, to cover their retreat. Thus, after the two fleets had been in fight of each other four days, during which time we used every means we could to bring them to battle, and thereby crippled some of our ships masts by carrying sail, the French keeping directly to windward of us. In the action our fore top sails and gib were very much shot, and our fore top mast stay sail, main top mast, middle and top gallant stay sails, fore and main top gallant studding sails, and in clearing ship lost two cutters, which by lowering down, filled and obliged us to cut them away; besides hove overboard several casks. Several were employed in splicing and knotting the rigging and shifting the sails.—The question that I have to ask you is, Whether these were the remarks of the Mate of this day's transactions, or whether they were your dictating to him?

A. I took this log from the board myself upon a piece of paper, as I have before related; I put down what signals I could recollect myself, and asking the signal Midshipmen; I shewed it to the Captain, who desired me to shew it to the Admiral; the Admiral approved of some and disapproved of others, with the remarks that I had made myself, and gave me a piece of paper with some remarks that he had made: so between the two I made the log up for that day from what I thought were facts.

The Admiral. Q. So then this log is as it was approved by the Vice Admiral?

A. Yes, that log was approved by the Admiral.

Prosecutor.

Prosecutor. I admit that fact by saying the Master's account is a fact.

The Admiral to the Court. Do I ask any thing improper in asking for that log he has under his arm being laid upon the table?

Judge Advocate. As Admiral Montagu has heard this, I wish it may be left on the table, for here is an interlineation in this book of some ships names.

Admiral Montagu, I have not desired myself to have it lay on the table; it is the gentleman trying who has desired it, and the Prosecutor has no objection.

Prosecutor. No; I desire it.

Prosecutor. I would only ask the Master whether he knows, or has any reason to believe, that either Captain Bazely or I had ever any knowledge of the leaves in the book being cut out, before yesterday, when it appeared to the Court?

A. No, I don't believe they had.

Captain Duncan. Q. When did you leave the witness's room yesterday, at what time?

A. When the Court broke up I saw a number of people going out—I heard them go out.

Q. Was you directed to leave the room?

A. No, but I stood by the door till the Court broke up, that I might be called if I should be wanted.

Q. Do you recollect at what time it was when you was on board the Queen, when you saw the log book?

A. A week before she sailed for Plymouth; I went on board to get a passage for a boy—my son.

Q. Can you recollect the day, or about the day?

A. I cannot positively say; it was sometime before she sailed to Plymouth.

Q. She sailed out to St. Helen's and came back again, that was when Lord Shuldham went out?

A. It was when Lord Shuldham went out. It was a week before she sailed for Plymouth, when Lord Shuldham went out.

Q. Can you recollect the day, or about the day?

A. No; it was a week previous to the time Lord Shuldham sailed.

Mr. WINCKWORTH, the Master's Mate of the Formidable, called.

The Court said they had no questions to ask him.

Prosecutor. I have no questions to ask him; I brought him for the satisfaction of the Admiral and the Court.

The Admiral. I have no questions to ask him now; but if those minutes come hereafter that are sent for express, there may be occasion to call him.

Captain JAMES KINNEER, late Lieutenant of the Formidable, now Captain of the Salamander fire-ship, sworn.

Prosecutor. Can Captain Kinneer remember the time, after the Formidable had ceased firing, and come out of the action, and had laid her head towards the enemy, does he remember the officers and men were ordered to return to their quarters, expecting the renewing the engagement when Admiral Keppel should come up?

A. Yes, sir.

Q. When did you first take notice where Admiral Keppel was?

A. Not till we wore the second time of wearing.

Q. At what distance do you reckon he was from the Formidable?

A. Between a mile and a half and two mile.

Captain Duncan. Q. Where was you quartered during the action?

A. Upon the main deck.

P. Q. Do you remember the Victory and the Formidable meeting after that?

A. I remember the Victory meeting the Formidable, and passing to windward, and under the Formidable's stern.

Q. Did the Victory stand to the southward after she had wore?

A. Yes.

Q. Do you remember the signal for the line of battle a-head, a cable's length asunder, on board the Victory and the Formidable?

A. I do on board the Victory, but I am not certain with respect to its flying on board the Formidable.

Q. Do you remember the Formidable's first hauling somewhat to windward out of the way of the other ships that took their stations between us and the Admiral; and afterwards to stand after the Admiral with all the sail she could set, and trimmed as well as the condition of the sails and rigging would admit?

A. I do.

Q. Did not the Victory encrease her distance from the Formidable during the whole afternoon?

A. I believe she did in some small degree.

Q. Did not the Formidable steer the whole afternoon, keeping the Admiral a little open under her lee.

A. Yes, sir.

Q. Was not that the proper course for fetching into her station in a line of battle, if the Admiral had not sailed faster than us?

A. I think it was,

Q. Had the Admiral sailed faster than the Formidable all the afternoon, while she continued to do so, was it possible for the Formidable to get into her station in the line agreeable to the signal then flying?

A. I don't think it was possible for the Formidable in that state.

Q. Then, sir, whatever signals might be made, or whatever messages might be sent, I repeat it again, was it possible for the Formidable to have complied with the message for getting into her station in a line of battle during that afternoon, unless the Admiral waited for her.

A. I think not.

Q. Do you remember, Sir, the signal being made in the evening, for ships to windward to bear down; several ships pendants being let fly at the same time?

A. I observed the general signal up, and the pendants for several ships of the Vice Admiral of the Blues division to bear down at the same time but I cannot say whether they were all let fly together.

Q. Were those signals repeated on board the Formidable, before or after the Fox frigate came down to speak with us?

A. To the best of my recollection, the signals were made before the Fox hail'd the Formidable.

Q. Do you remember whether the Fox cheered the Formidable first; or whether the Formidable cheered the Fox first?

A. I am pretty clear the Fox cheered the Formidable first.

Q. Where was you stationed at that time, carrying on the business of repairing the rigging.

A. On the poop, and was then there.

Q. Did

Q. Did the people on the poop of the Formidable cheer the Fox first—being there, you must speak to that particular part, whether there was any thing of that kind there?

A. No.

Q. At what distance do you reckon the Formidable was from the Fox at dusk, that evening?

A. I believe the Formidable was about one mile to windward of the Victory's wake, and about three miles from her.

Q. About what time, to the best of your recollection, was it, when the Fox spoke to the Formidable?

A. I believe it was after seven.

Q. What was the message?

A. I did not hear the message distinctly.

President. Q. You was upon the poop?

A. Yes, but I did not hear it distinctly.

Q. You can tell what you did hear?

A. I understood the purport of the message brought by Capt. Windsor, was, for the Vice Admiral's division to bear down into the Admiral's wake.

Q. Did you hear any answer given to that.

A. No, sir.

Prosecutor. Q. Do you remember whether any of those ships signals which had been thrown out, had been hauled in, because of their being observed before the Fox came to her?

A. Two ships to windward of the Formidable, which, I believe were the Egmont and America, bore up shortly after the signal was made, and upon their pendants being hauled in, brought to again to windward of the Formidable.

Q. You have represented the Formidable as not being able to keep up with the Admiral—his ship carrying so much sail upon a wind, I apprehend you mean—nevertheless, are you of opinion, that, if the fleet had bore down upon the enemy to renew the attack, that the Formidable could have gone down, and have gone into action, notwithstanding she was not able to carry sail upon a wind?

A. Yes; but she could not maintain her situation in a line, at a cable's length asunder.

Q. Did the Admiral, at any time in the afternoon, bring to, to let the ships come up with her, that you know of?

A. Not that I observed. I was employed the whole of the afternoon, after coming out of action, in repairing the damages of the rigging and sails.

Q. Were not the officers and men employed all that afternoon and night, in refitting and rigging of the ship, and the sails?

A. Yes.

Q. Was every thing done that could possibly be done, for getting the ship in a condition, with the best dispatch to get up with the Admiral?

A. I believe there was nothing neglected by the officers and men.

Q. Did not the drum beat to arms at two o'clock in the morning of the 28th?

A. The drum beat to arms, I believe, nearly about that time, I cannot charge my memory with the exact time.

Q. Were not all hands at quarters, and the ship in her station, astern of the Admiral, at a proper distance, as well as could be estimated in the night, before day-light, in the morning, expecting immediately to engage?

A. All hands were at quarters, and the Formidable was in a line, astern of the Admiral; but I cannot say whether she was exactly in her station, as I don't know how many ships were a stern of her, and she was ready to engage, and we were then in expectation of the orders for to begin firing,

when it was discovered there were only three strange sail in sight.

Q. At day-light, when you saw those three ships, how near do you reckon the nearest of them was to you?

A. I did not see them till the guns was secured, and then they had bore away, and I believe the nearest at that time was something more than a mile from the Formidable.

Cross Examination.

The Admiral. Q. Capt. Kinneer said, that the Formidable, after having wore, with her head towards the enemy, wore back towards the Victory, in the afternoon, at two o'clock, while the Victory was with her head towards the enemy, did the Formidable wear towards the Victory, by signal?

A. I have already said that I did not see the Victory, till the Formidable had wore the second time, consequently do not know whether the signal was up for wearing or not.

Q. When you first saw the Victory—how was the Victory and Formidable situated with respect to each other?

A. The Victory was upon the Formidable's star-board bow—the Formidable standing towards her, I believe in a direct line, upon the opposite point of the compass—observe, I don't mean directly down to the Formidable.

Q. Did you then observe the signal for the line of battle, a head, flying on board the Victory, exactly at that time, Sir?

A. No, Sir.

Q. Did you, when you pass'd her?

A. No, Sir; not till she went under the Formidable's stern.

Q. What sail had the Formidable sett, when she pass'd the Victory?

A. I do not recollect.

Q. What sail had she sett, when her head was towards the enemy, before she wore down to the Victory?

A. I do not know, as I was upon the main deck.

Q. What sail did the Victory go under, the afternoon of the 27th, when she stood to the southward—the whole afternoon, or any part of it when you saw her?

A. I took very little notice of the Victory, during the afternoon, being employed, as I said before, in repairing the damages.

Q. How did you take notice that she increased her distance from the Formidable?

A. I observed the Victory was farther astern of the Formidable, in the evening, than about three o'clock, when she wore astern, and stood to the southward.

Q. Was she farther from the Formidable at four o'clock?

A. I took no account of time?

Q. Did you ever set the Victory by compass that afternoon?

A. No.

Q. Did the Formidable unbend any of her sails that afternoon, in order to bend others?

A. I believe the fore and mizen top sails were shifted about eight o'clock.

Q. Do you remember when the fore top sail was unbent?

A. Not exactly.

Q. Do you remember within an hour or two?

A. No, sir; but I remember the fore and mizen top sails were set about half after eight.

Q. Do you know whether they were both unbent together at the same time?

A a

A. I

A. I do not know, sir.

Q. You do not know when the fore top sail was unbent?

A. No, I do not.

Q. You say it was bent and set by half an hour after eight?

A. I believe so, sir.

Q. Was there any fore top sail to the yard at half past seven?

A. I cannot tell.

Q. Was there any at half past six?

A. I cannot tell.

Q. Was there any at half past five?

A. I cannot tell.

Q. Was there any at half past four?

A. I believe the old sail was not unbent at that time: I do not know from my own observation?

Q. Do you know when you first saw the signal for ships to bear into the Admiral's wake?

A. I believe it was about seven o'clock; I cannot speak to time with any certainty.

Q. Did you not see it sooner, sir?

A. I did not see it until the time the pennants were let fly; I cannot speak with certainty.

Q. How long was Captain Kinneer upon the poop employed?

A. I was ordered upon the poop I believe about three o'clock; I cannot be sure; I was there and about the after part of the ship, as occasioned required, the most part of the afternoon.

Q. The log was never hove during the whole time you were upon the poop?

A. I have said that I did not see the log hove.

Q. There was no want of seamen in the Formidable to expedite business as fast as a well-manned ship could expedite it?

A. The Formidable was manned as other ships are in general, with seamen, landsmen, and ordinary men.

Q. Then she was but indifferently manned?

A. She was nothing remarkable either one way or another.

Q. Were they sober and orderly all that afternoon, or was there any drunkenness?

A. I believe they were sober and orderly in general; there might be one or two perhaps a little in liquor.

Q. I believe Captain Kinner said it was about seven o'clock when the Fox came to the Formidable; he thinks so: is he sure it was seven o'clock upon recollection?

A. I have not spoke to time with any certainty.

Q. Do you think it was half after six when the Fox came to the Formidable?

A. I believe it was more than that; I believe it was later.

Captain Duncan. Q. I beg to ask, Captain Kinner, What sail you wore the Formidable twice under?

A. The fore sail and top sail, I believe, only, our gib and fore top mast stay sail, was cut away in the action.

Q. Was the top sails a-trip?

A. I cannot tell, as most of the running rigging was cut away.

Capt. Boteler. Q. You have said sometime ago, that in the morning of the 28th one of three strange ships seen that morning was within about one mile of the Formidable. Did you fire at her, or make any signals to the Admiral of those ships being in sight, or make any preparation for chasing them?

A. I believe I said that the nearest of those ships was about a mile from the Formidable. We did not fire at her, neither did we make any signal to the Admiral to my knowledge.

Capt. Duncan. Do you recollect what time the sun set, or that it was dark?

A. I believe the sun set a quarter before eight in the latitude of 48, upon the 27th of July.

Q. What time was it quite dark?

A. I cannot justly ascertain.

The Court adjourned to Monday.

THE SIXTEENTH DAY'S PROCEEDING.

CAPTAIN CRANSTON GOODAL,
of the Defiance, sworn.

Prosecutor. Q. I would ask Captain Goodal, When he first saw the French fleet upon the morning of the 27th of July.

A. About five or six o'clock.

Q. Did they appear to you then to be in a line of battle?

A. They did not, Sir.

Q. With what part of the French fleet did you begin action that morning?

A. With the headmost ships of the center.

Q. Was your ship one of those that chased that morning by signal?

A. She was not.

Q. When you began the engagement was any of our ships then near you so as to be of support to each other?

A. Not when I first began to engage. I saw no ships engaging the enemy but the ship that was a-head of me, and a three-deck ship which I took for the Prince George, who I drew up with soon after I began the engagement.

Q. When you drew up with the Prince George had you then joined the center division?

A. Yes. I apprehend she belonged to the center division certainly.

Q. Your ship was properly one of the Vice Admiral of the Blue's division?

A. Yes.

Q. During the engagement did any of our own ships fire over you or you over them?

A. No.

Q. When you passed the rear of the enemy where was you with respect to the Victory?

A. The Victory was upon the Defiance's lee bow.

Q. What distance did the Victory stand after she had passed the rear of the enemy before she wore, to the best of your judgment?

A. She might be about half a mile or something more upon the Defiance's lee bow, and wore as I imagine soon afterwards.

Q. What distance do you reckon the Defiance was from the nearest of the enemy's at this time?

A. Three or four cables lengths.

Q. Are you speaking of the time when the fleet wore?

A. No, Sir.

Q. What then?

A. I am speaking of the time when I observed the Victory when I came out of action after the rear of the enemy had passed the Defiance.

Q. I desire Captain Goodal to speak to the time the Admiral did wear and laid his head towards the enemy again, at what distance then to the best of your judgment was the Victory from the rear of the enemy?

A. At the time the Victory wore it might be a mile or a mile and a half.—less than that I believe a mile.

Q. Do

A. About two of a quarter after.
 Q. After the Victory wore, or before?
 A. After the Victory wore.
 Q. Did you see any of the ships of the British fleet dismasted?
 A. No.
 Q. Did you see the Admiral wear the second time?
 A. Yes.
 Q. Where was the Vice Admiral of the Red and the ships of his division?
 A. They were to windward with the rest of the fleet.
 Q. Had they wore and stood to the northward before the Victory and the center division?
 A. I think so.
 Q. Then where they more advanced towards the enemy than the center division at the time the Admiral wore a second time?
 A. They appeared to me to be so.
 Q. When did you first take notice of the Vice of the Blue after you ceased firing?
 A. At the time that he was near the Victory.
 Q. Did you never look towards the ships that remained engaged after you came out of the engagement?
 A. I did not sufficiently to retain any ideas about them.
 Q. Then you did not see the Vice Admiral of the Red near the Victory?
 A. Till she was near. I think the first time I saw her was with her head towards the Victory.
 Q. Did you know the reason why the Admiral and the rest of the fleet might not have wore much nearer to the enemy than a mile or a mile and a half distance after they passed them?
 A. I do not: it is impossible to ascertain distances, especially at a time there is so much to do in a ship.
 Q. If they had done so do you know any reason why the engagement might not have been continued, or immediately renewed, so soon as the vice of the blue was out of the engagement, with the ships of his division, the Vice Admiral of the red at that time being to windward of the Admiral?
 A. The separation of several of the ships, and the disabled state the others appeared to be in, was the reason why, I think, the Admiral could not have collected a formidable body of ships instantly.
 Q. Do you know the disabled state of any of our ships but your own?
 A. They appeared to be so in their sails and rigging, there were several appeared to be disabled in their sails and rigging.
 Q. From the very brisk fire that our ships kept up during the engagement have not you reason to suppose the enemy suffered in proportion to the British fleet?
 A. The enemy did not appear to have suffered so much in their sails and rigging as the English fleet, but I am persuaded they must have suffered much more in their hulls and in their loss of men.
 Q. You have said, Sir, that the ships were scattered and separated much on their coming out of the engagement; would that have been the case if the fleet had been formed in a line of battle, in which case the captain cannot quit his station according to the fighting instructions?
 A. They were separated from each other, but not scattered or divided so much as not to be collected in a certain time.—Read the question again, I don't understand one half of it.

The question read again.

A. They certainly would have been more connected if the two fleets had engaged in a regular line of battle parallel to each other.

Court. Q. Do you think the engagement might have been brought on that day, had you been in a regular line of battle in the condition they were then in?

A. You mean if the Admiral had made a signal to form a line of battle.

Q. Yes?

A. No, the Admiral had always offered the enemy battle, and it was in their breast alone to have bore down to engage. I don't think the English fleet, if formed in a line of battle that day, that morning could possibly have attacked the enemy.

Q. Did not the French fleet edge down and make the attack, without an indication of their not intending to engage?

A. They partly edged down, and were partly met with by the English fleet.

Court. Q. Did they edge down before the engagement began?

A. I cannot positively answer that, but I do not think their van did edge down much.

Q. Did it appear to you by the enemy's standing toward the British van, and forming a new line of battle in the evening, that they shewed a disposition to renew the engagement by that motion?

A. It indicated a disposition to receive an attack, but they had it in their power by making more sail to have made one.

Q. You have said, Sir, that after you came out of the engagement, several ships appeared to you to have suffered in their sails and rigging; how many of them were in that state that you observed at that time?

A. Ten or a dozen of them I saw with my own eyes.

Q. Do you think they were not in a condition fit to attack an enemy where you say they shewed a disposition to receive them?

A. Towards the close of the day I believe they were.

Q. Was your ship in that condition that you was not fit to continue in action if you had an opportunity of laying along side one of their ships?

A. She was ready for action within thirty or forty minutes afterwards.

Q. Did you see the Vice Admiral of the Red, with his division, bear down into the Admiral's wake that afternoon?

A. I saw the Vice Admiral of the Red bear away, but in a position to go a-head of the center division, and pass, to the best of my judgment, under the lee of the Vice Admiral of the Blue, and to windward of the Commander in Chief.

Q. Do you know whether the Vice Admiral of the Red was ordered to take the station of the Vice of the Blue a-stern of the Admiral?

A. No.

Q. Was not the ships of the Vice Admiral of the Blue division, the last that came out of the engagement?

A. I believe so.

Q. Were not the ships that you saw disabled in their sails and rigging, chiefly of that division?

A. There appeared to me to be some of that division, and I suppose some belong to others; I could not imagine the whole division was in that state;—

Q. Though

Q. Though I believe before that, I asked whether you could speak with certainty to part of them were of the other divisions?

A. I cannot, but I presume so; so many of them were a-head of me at that time, and upon my lee bow, a considerable distance.

Admiral Arbuthnot. How many of the Vice of the Blue's division did you see disabled?

A. I did not at that time make any particular observations upon what divisions the ship belonged to.

Q. Did you observe what sail the Victory carried during the afternoon after she stood to the Southward?

A. I think when she first stood to the southward she had her fore-sails and top-sails, and soon afterwards her top-sails only, but I cannot positively speak to every change of sail or every alteration of sail.

Q. Which of the French fleet were in sight the next morning?

A. Three sail of ships, which were about a mile and a half or two miles from the Defiance a-stern and taken for French men of war, but the body of the French fleet was not seen from the Defiance.

Q. Did you take those three ships to be line of battle ships or frigates?

A. The nearest ship I took to be a line of battle, the other were smaller ships.

Q. Were they chased by the British fleet?

A. I believe they were.

Q. By what ships, and how long?

A. For a short time only, and I know not by what ships.

Q. Did those ships ever set all their sails?

A. That I cannot speak to.

Q. Was there any signal made for leaving off chase?

A. That I do not recollect.

Q. I think you have said they were a mile or a mile and a half from the Defiance?

A. The nearest ship was about a mile and a half or two miles from the Defiance, the others farther off.

Q. Did they appear to be nearer to any other part of the English fleet?

A. They must have been somewhat nearer to the ships that were a-stern in the line.

Q. Among those ships that you mentioned to have seen when you first came out of the engagement in a disabled state in their masts and rigging, was any of them of the red division?

A. I don't recollect that any of them did belong to the red division.

Q. Suppose those ten or twelve ships that you mentioned, that appeared to be disabled, immediately after coming out of action, in their masts and sails and rigging, was not their 18 or 20 remaining that appeared not to be so?

A. The ships that had suffered in their sails and rigging drew more of my attention, but I suppose there might be some so.

Q. Were the frigates disabled?

A. I don't remember having seen a frigate from the time I engaged, nor during the whole afternoon.

Cross Examination.

Admiral Montague. Q. Sir, you have heard the charge read against Admiral Keppel, where he is by the 1st article charged with negligence in performing the duty imposed upon him by the 3d; he is charged with not doing the utmost in his power to take, sink, burn and destroy the French fleet; by the 4th he is charged with putting the British fleet in a disgraceful position, having the appearance of flight, and that the French fleet offered him battle; and that the French have published to the world, the British fleet ran away:

by the 5th article he is charged with misconduct and neglect, and that the honour of the British navy was tarnished by the said Admiral Keppel. Now, Sir, you will acquaint the court if you know of any act of Admiral Keppel, either upon the 27th or 28th of July, whereby it appeared that he was guilty of the charge alledged against him in the different articles of the charge; and you will remember I do not ask your opinion but from your own knowledge?

A. Sir, no man can have more esteem or respect for Admiral Keppel than I have: I think him highly valuable, both as an officer and a gentleman; but as this is a question that tends to my passing my judgment upon the charge who am only a witness, I must beg leave to decline answering it. I observe, it appears to me to be rendering my evidence nugatory, and I think it an assumption upon the court, whose judgment upon my evidence, as the judges upon that evidence rests in them alone, and not in me.

Admiral Montague. Q. Sir, I have not asked for your judgment; I am one of the people here that are to judge, and to acquit or condemn Admiral Keppel; a charge is sent to us, which charge we are ordered to try, in order to come at facts, evidences are examined, and I have heard every thing that has been said by the evidence here, and I am to judge afterwards how far it will acquit or condemn; but in order to prove the charge, I think, I ask a fair and honest question, both for my country and for the Admiral; for my country, if he has done that which has disgraced it, I desire the court may know it; if he has not done it, I desire the court may know it also.—I only ask from your knowledge as a commander of one of the King's ships there, whether you saw any act of Admiral Keppel in which he falls guilty of the different articles of this charge?

A. As a witness I have farther objections to answering a question that is giving a judgment upon the charge, from a possible situation of men, that I, or the man I love in the service, may one day or other be placed in, by a malignant prosecution and evidence that can support or refute that charge to be brought from the source of discontent, and therefore as those consequences might be fatal to my own character, or my own honour, or perhaps the character and honour of those whom I love, I would wish to decline answering that question.

Admiral Montague. Q. If every evidence that appears before this court declines giving an answer to the questions that are asked him, it is impossible the court can ever be a judge whether the prisoner has been guilty of the charge against him or not.—If I see a man guilty of any such acts, it is my duty to say; if I do not see him guilty of any such act, it is my duty also to say it, in order to save the life of a man who has a very heavy charge against him.

Captain Cranston. This must be matter of opinion entirely apprehend.

Admiral Montague. No, Sir, he is a captain of a ship in the Squadron, present at the time, and I must ask for facts.

Captain Cranston. It must be his opinion only. The witness desired to be heard.

The court agreed to it.

Captain Goodal. If my opinion in passing my judgment declaratory upon a charge, or the merits of the charges selected from each other, had been proposed to me, I should have had no objection to have done it to preclude any farther examination, otherwise it is dictating to the court.

Admiral Montague. My question is to facts relative to the charge.

Judge

The Admiral: Q. Where was the Defiance on the morning of the 27th?

A. On the lee quarter of the Formidable.

Q. Did you see the signal for ships to chase to windward?

A. I was not upon the deck when the signal was made.

Q. Did the officers inform you of it?

A. Yes, afterwards I was informed of it, Sir.

Q. Do you recollect what sail you was under at that time?

A. Fore-sail and double-reefed top-sails.

Q. Did you make more sail upon the signal being made for the ships to chase.—Did the Defiance make more sail?

A. No, we did not, Sir.

Q. You said you came to action close astern of the Prince George; were not several ships engaged a-head of the Prince George?

A. The enemy had fired 12 or 15 minutes upon the Defiance before she returned any, and the smoke was so great she came in about that time to close action, and fired 4 or 5 broad-sides, and soon afterwards, when the smoke cleared away we perceived the Prince George a-head of us, and drew soon afterwards close up with her.

Q. At this time was the Sandwich, or any other of the center division drawn near up a-stern of the Defiance?

A. There was no ship a-stern of the Defiance that I saw.

Q. Captain Goodal, you understand the weather-quarter, or the lee-quarter—or a-stern?

A. There was no ship a-stern of the Defiance, that I saw, in the action at the same distance; I rather guess at it.

Q. Captain Goodal, you say you received the fire of several of the French ships for some time before you began action; with what ship, a-head or a-stern of the French admiral, or was it the French admiral himself you began the action with?

A. The second ship a-head.

Q. How many French ships were there a-stern of the French admiral in the 100 gun ship?

A. Really I don't recollect, nor could I count them, the smoke and the fire was so heavy.

Q. Was there 6 or 7 a-stern?

A. I should apprehend there was.

Q. Was there 8 or 9?

A. There might be that.

Q. Did you see more French flags together than one; were there French flags together?

A. I think there were two very near together.

Q. Was the French admiral in the center of his fleet?

A. I think he was not.

Q. Did you see the signal for the line of battle a-head flying on board the Victory while she was advancing on the larboard tack after the action?

A. I did.

Q. Did you see any, or how many ships formed in a line, a-head or a-stern of the victory, while she continued to stand upon the larboard tack?

A. To the best of my judgment there were not many.

Q. Do you know there were any?

A. I think there were.

Q. Can you name them?

A. If I mistake not the Foudroyant and the Prince George might be there.

Q. Was she, Sir?

A. I am not certain.

Q. Could you have repaired your own damages so as to be able to get into the line yourself?

A. At what hour do you speak of?

Q. While the Victory was standing upon the larboard tack, and the signal for the line of battle flying?

A. We had then wore, and were standing off after Sir Robert Harland's division.

Q. Did you stand a-head of the Victory; were you able to get a-head of the Victory while she was on her larboard tack with her signals out for the line of battle: I mean was your rigging repaired time enough to do it?

A. We had wore with our rigging still in a disordered state, except what contributed to assist to wear, but bringing no canvass forward, we were much to windward of the Victory, who was upon our lee-beam or lee-quarter.

Q. Am I to understand that you was so repaired as to be able to keep your station in the line of battle with the Victory, while the Victory was upon the larboard tack, was your damages so repaired as to enable you to take your station a-head of the Victory, which was your station while she was in a line of battle upon the larboard tack?

A. Had the signal been out for a line of battle, at the time the Defiance wore, she could have done it, but she had stood on after Sir Robert Harland's division, and had got so far a-head as to bring the Victory upon the lee-beam before the signal for the line was seen, and soon after to the best of my judgment, the Admiral stood a little to the southward—laid his head to the southward.

Q. In the evidence you have given, you have mentioned the signal being out while the Victory was upon the larboard tack, it is in the evidence, therefore I will not trouble Captain Goodal any farther upon it.

Captain Goodal: I beg your pardon, Sir, I am a very honest man, and perfectly unprejudiced, and not in the least apprehensive of any person convincing me that I have not given my evidence justly as far as it laid in my power.

Q. What time of the afternoon did you again join the Vice Admiral of the Blue after you came out of action?

A. I edged down to the Vice Admiral of the Blue, when the Red division bore away, and stretched a-head to get a-head of the center.

Q. How was the Vice Admiral of the Blue situated with respect to the Victory, when the Vice Admiral of the Red passed between her and the Formidable to go a-head?

A. At the time I joined the Vice Admiral of the Blue—the Victory had her head to the southward, to the best of my judgment: I was not at any great distance when the red division began to pass between the center and rear divisions.

Court. Q. Do you know any part of the day of the 27th or 28th of July, that the English fleet run away from the French fleet, or shewed any appearance that could be so construed?

A. No.

Q. Do you know any one part of the Days of the 27th and 28th of July that the French fleet run away from the English fleet, or shewed any appearance that could be so construed.

A. Upon the 28th of July—the French fleet avoided and fled before the English fleet.

Admiral Montague. The evidence that Capt. Goodal has given before this court to-day—to me has given more satisfaction than any man that has appeared here. But upon the question that I ask Capt. Goodal, he seemed to make a doubt whether he had a right to give an answer to those questions, or whether this court was to inquire into the charge

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alleged against Admiral Keppel: I only beg the order to Sir Thomas Pye the president of the court may be read, so far as relates to the trial of Admiral Keppel; by which I do think this court is strictly to adhere to the charges, and that the evidence that is produced before them is matter of opinion in general.—To which the court assented, and the order, &c. was read in court as stated in the beginning of these proceedings.

The order having been read, Admiral Montague spoke as follows:

I humbly conceive I have a right, as a member of this court, to ask questions relative to the charge as it appears before me; and to the charge only I shall strictly adhere; and I shall judge upon it when the evidences are examined.

JACOB WALLER, Third Lieutenant of the Formidable sworn.

Prosecutor. Q. I desire Mr. Waller may be asked, what distance he judges the Victory with the body of the fleet from the rear of the enemy, at the time they passed the rear of the French fleet, and the Formidable had ceased firing?

A. I do not recollect to have seen the Victory at the time of passing the rear of the enemy.

Q. Did the Formidable, after passing the rear of the enemy wear, and lay her head towards the enemy again?

A. Yes.

Q. At what time do you recollect when you afterwards took notice of the Admiral and the rest of the fleet?

A. I don't recollect seeing the Admiral, until we wore a second time; as to the time of day I cannot speak.

Q. At what distance do you think he might be then?

A. To the best of my recollection the Admiral was then a mile and a half or more.

Q. While the Formidable lay with her head towards the enemy, were not the officers and men ordered to their quarters in expectation of renewing the engagement when the Admiral of the fleet should come up?

A. We were ordered to our quarters, in course, I suppose, it was expected we should engage.

Q. Where was you quartered?

A. Upon the lower gun deck.

Q. When the Formidable wore a second time to stand towards the Victory, was not the signal for battle then hauled down, or was it flying?

A. I do not recollect.

Q. While the Victory and Formidable were standing towards each other, was not the Victory's end on directly towards the Formidable?

A. We were standing parallel to each other, I believe, nearly upon the opposite points of the compass, a very little to windward.

Q. Did you see the signal for the line of battle on board the Victory before the Formidable came close to her?

A. I don't remember seeing the signal till the Victory came very near towards the Formidable.

Q. While the Formidable was standing towards the Victory, did you see any one ship between them that appeared to have taken their station in a line a-head of the Admiral?

A. I don't recollect to have seen any.

Q. When the Victory and Formidable met did the Victory wear under the Formidable's stern, run to leeward, and then haul her wind to the southward?

A. Yes.

Q. Did not that leave the Formidable a-stern, and to windward withal.

A. We were forced down to windward, and as the Victory went a-head of us we went a-stern.

Q. After the Formidable had got out of the way of other ships, did she stand after the Admiral, with all her sail set and trimmed, as well as the condition of her rigging would admit?

A. Yes.

Q. Was she at that time in a manageable condition to keep her station in a line of battle, between two ships, a cable's length afunder, if she could have got into her station?

A. I do not think she was.

Q. Did not the Victory increase her distance from the Formidable during the whole of that afternoon?

A. Yes.

Q. Did the Formidable steer during that afternoon, keeping the Admiral a little open under her lee?

A. To the best of my recollection she did.

Q. Was that a proper course for fetching into her station, as the Admiral was under sail, and not coming to?

A. I think it was.

Q. Was every thing done on board the Formidable that was possible, to refit her with the utmost dispatch?

A. To the best of my judgment every thing was done?

Q. As you have stated, Sir, that every thing was done that could possibly be done, with the utmost dispatch, that she steered a proper course for getting into her station; that the Admiral increased his distance; that he did not bring to, to let ships get into their station, I must now ground my question upon those considerations. I would ask Mr. Waller, whatever signals were made, whatever messages were sent, and at whatever time such signals might be made, or such messages sent, was it possible for the Formidable to have got into her station, in a line of battle, unless the Admiral had waited for her?

A. I have before observed, I believe, that we did every thing to get into our station, and that the Victory gained upon us; of course we could not get into our station, without the Admiral had waited for us.

Admiral Arbuthnot. You have also observed, Sir, if you did get there, you could not have kept there?

A. I have observed that before.

Court. Q. If the Admiral had bore down, and waited for you, should you have been able to renew the attack?

A. I cannot be a competent judge in a question of so much importance.

Q. Do you know if the Admiral did bring to, any part of that afternoon, for the ships to get into their stations?

A. I do not know that the Admiral did bring to, in order for ships to get into their stations.

Q. Did you happen to observe, at any time, what sail the Victory was under that afternoon?

A. I do not recollect that I did observe it.

Q. Mr. Waller knows the state of the rigging about the foremast, without enumerating them, I presume, I will only mention what has been stated.

The Admiral. I apprehend that it is irregular to tell the witness any evidence that has been given.

Court.

Court. Ask the defects.

Prosecutor. Q. Do you know the defects of of the rigging about the foremast?

A. I cannot recollect very particularly.

Q. Was it safe to carry sail upon that mast upon a wind, till the stays were got up, and the rigging repaired?

A. No, I think not.

Q. Was it not in danger to put any sail upon a wind, till the rigging was repaired?

A. That was the general opinion on board the Formidable.

Admiral Montague. I beg leave to ask one question of this evidence. From the time the Formidable hauled down out of action, and laid her head towards the enemy, how long was it before you went upon the fore-castle to see the state and condition of the masts and rigging, you being quartered upon the lower gun deck?

A. I don't recollect that I was upon the fore-castle.

Q. Then you did not speak to the question asked you by the Vice Admiral, but from hearsay?

A. I believe I have observed so.

Prosecutor. Q. Do you remember a signal made in the evening, for ships to windward to bear down, and several ship's pennants let fly then, or soon afterwards?

A. I remember several pennants flying, but for what ships, or for what purpose, I cannot pretend to say.

Q. Were those pennants repeated on board the Formidable, before or after the Fox frigate came to speak to her.

A. I believe before.

Q. Do you remember whether the Fox's people, at the Formidable's people, cheered first.

A. I perfectly remember the Fox cheered first.

Q. Where was you stationed for perfecting the repairs carrying on in the rigging?

A. I was stationed at the main rigging, or the rigging about the main.

Q. Did you happen to be in the way, to hear the message delivered by the Captain of the Fox?

A. I remember to have heard something pass between them, but I don't remember what it was.

Q. Notwithstanding the damages you have mentioned the Formidable received, although she was not able, during the afternoon, to reach her station in the line of battle, as the Admiral did not stay for her, do you not think she was capable of going down before the wind, and engaging an enemy, if the Admiral and the rest of the fleet had done so?

A. We were certainly capable of going to leeward, and of engaging, I make no doubt, if we had been along side of a ship at proper distance, we were able to engage; we were capable of going to leeward, most certainly.

Admiral Arbuthnot. Do you mean you were capable of going down, and keeping your station in line of battle?

A. I have before observed we were not capable of keeping our station in a line of battle, but we were capable of going down.

Cross examination.

The Admiral. Did Mr. Waller, when the Formidable was upon the larboard tack standing to the French, see the repeating frigate?

A. I did not attend to the repeating frigate.

Q. Did you in the afternoon, at any one time, see the Victory by compass?

A. No.

Q. Did you, at any one time, in the afternoon, observe the signals for the line of battle, and blue flag, at the mizen peak, on board the Victory?

Q. I shall not put it standing from you, I shall put it after the Victory wore with her head to the southward?

A. I do not recollect to have attended to any signals on board the Victory, after she was upon the starboard tack.

Q. Then I am to understand your attention was to the employment you was stationed to, knotting and splicing the rigging?

A. That engrossed the greatest part of my attention.

Q. Was you assisted by the men properly, and like good seamen all that time?

A. I think I was.

Q. Had they any wine or grog given them, to cheer them up that afternoon?

A. Not to my knowledge.

Q. What time was the fore-top sail unbent, on board the Formidable?

A. I cannot charge my memory, Sir, with them.

Q. Do you know within half an hour or an hour, or an hour and an half, or two hours?

A. I cannot pretend to say at what time.

Lieutenant JOHN HILLS, sworn.

Prosecutor. Q. Do you recollect the first time you took notice of the Victory and the Formidable, after the Formidable came out of the engagement?

A. I saw her soon after the Formidable wore, and laid her head towards the enemy.

Q. What distance, according to the best of your judgment, was she then from the rear of the enemy, or from the Formidable, at the time the Formidable passed the rear of the French fleet?

A. I should judge it about two miles.

Q. Did not the Formidable immediately wear, and lay her head towards the enemy, after she had passed the sternmost of the enemy's ships?

A. Soon after she did.

Q. When you first saw the Victory, and the body of the fleet, were they standing towards the French, or towards us, as we were just by them.

A. To the best of my recollection, they were, the Victory was standing towards the Formidable.

Q. Were not the officers and men ordered to their quarters, in expectation of renewing the engagement, when the Admiral and the fleet should come up.

A. They were ordered to their quarters.

Q. When the Formidable wore again to stand towards the Victory, was not the signal for battle hauled down?

A. I did not see it flying.

Captain Duncan. Q. Did you wear by signal or not?

A. I do not know, Sir.

Q. Did you see any signal for wearing?

A. I did not, Sir.

Prosecutor. Q. When the Formidable was standing towards the enemy, was not the Victory's head directly towards her?

A. To the best of my remembrance, it was.

Q. Can you remember, Sir, when first the signal for the line of battle, on board the Victory, was seen from the Formidable?

A. I

A. I cannot.

Capt. Duncan. Was you not in such a situation, when your head was towards the Victory, that the signal for the line of battle might have been out and you not have seen it on board the Victory when you first wore?

A. Yes it is very possible, for the ship was then end on.

Court. Where was you quartered?

A. On the lower deck in the time of action, but at the time the ship wore upon the forecastle.

Q. Do you remember while the Formidable was standing towards the Victory whether you saw the repeating frigate or not?

A. I don't remember to have seen her.

Q. Suppose she was nearer to the Victory and steering the same course as the Victory, might not the signal on board of her be equally as imperceptible to the Formidable?

A. I think so.

Q. Did you observe, Sir, as you stood towards the Victory, whether any ships had taken their stations in a line of battle between us and her?

A. I did not observe any.

Q. When was it you observed the Victory wore and the Formidable met? Did the Victory run under the stern to leeward and then haul her wind and stand to the southward?

A. I think she did.

Q. Did not that leave the Formidable a-stern and to windward withal?

A. Most undoubtedly.

Q. After the Formidable run out of the way of other ships, did she stand after the Admiral with all the sail she could set trimmed as well as the condition of her rigging and sails would admit?

A. It appeared so to me.

Q. Notwithstanding, did not the Victory increase her distance during that afternoon?

A. The Victory did increase her distance from us that afternoon.

Q. Did not the Formidable steer all the afternoon keeping the Admiral a little open upon her lee bow?

A. I was not upon deck all the afternoon; when I saw her she did.

Q. Was that a proper post for fetching into her station in a line of battle as the Admiral was under sail?

A. I should think so.

Q. Was every thing done that was possible for refitting the ship with the utmost expedition?

A. I think so.

Q. Where was you stationed for the purpose of carrying on the works of refitting?

A. Upon the forecastle.

Q. Who else was stationed there of the officers?

A. Captain Beazely was there and the Master was there sometimes.

Q. Had not you almost all the running rigging about the foremast to new reef as well as the standing rigging to knot or splice and a new fore-stay and spring-stay to get up?

A. We had.

Q. Was not the Boatswain killed in the action?

A. Yes.

Q. Was not the loss of him very severely felt in getting the ship refitted in her rigging and sails?

A. Very much felt.

Q. Was not you deprived of the assistance of three of the Lieutenants during that night; two of them being sick and unable to do duty and one wounded?

A. Two of them were sick and unable to do duty and one was wounded.

Q. Whatever messages were sent or whatever time such signal might be made, was it possible for the Formidable to have got into her station in the line unless the Admiral had waited for her?

A. I do not imagine it was possible.

Q. Did you happen to take notice what sail the Victory was under at any time of that afternoon?

A. I did not observe.

Q. Do you recollect about what time the fore-top-sail was unbent?

A. I do not exactly remember the time.

Q. At what time was a new one set?

A. At eight o'clock.

Q. Was that as soon as it was safe to set upon the mast being upon a wind?

A. I judge so.

Q. During the time you was employed in refitting the rigging did you observe any tardiness among the people, or any disorder or confusion which interrupted that service being completed with all dispatch and propriety?

A. I saw none, and I believe every dispatch was used.

Q. Was some wine given to them to encourage them, to refresh them, or was it before or after the work done, or the new sails set and what time was it?

A. The sails were set and half a pint of wine given to each man; I judge it was between nine and ten o'clock at night.

Q. Did that occasion any interruption or retardiment to the duty of the ship, or was it of use and encouragement to the men?

A. I think it encouraged them very much and was by no means a cause of any tardiness.

Q. Do you remember the signal being made in the evening for ships to windward to bear down and several ships pendants let fly for that purpose?

A. I remember several ships pendants let fly and understand that was a signal for them to bear down.

Q. Were they repeated before or after the Fox frigate came down?

A. I did not see them on board the Victory but the Formidable before the Fox came down.

Q. Do you remember whether the Fox people or the Formidable's people cheered first?

A. I remember the Fox cheered first from an expression of Captain Bazely at that time, which was, that is hearty, my lads, return the cheer.

Q. During the afternoon of the 27th, notwithstanding the damages you have mentioned the Formidable received, might she not have born down and engaged an enemy to leeward if the Admiral and the rest of the fleet had done so although she was not able during the afternoon to take her station in a line upon the windward unless the Admiral had waited for her?

A. I do think she might have bore down and engaged an enemy tho' not able to follow the Admiral in a line upon a wind and keep him company.

Cross Examination.

Admiral Arbuthnot. You have said, Mr. Hills, that your foretop-sail was not set till eight o'clock at night?

A. I beg your pardon, I have not said so.

Q. What time was it set?

A. I said it was set at eight o'clock, not that it was not set till eight.

Q. Mr. Hills who was upon the forecastle can tell what time it was set?

A. I was not upon the forecastle to see it set.

Q. Was it set at seven?

A. I believe if you recollect I said I was ordered from the fore-castle ; I did not see it set.

Q. I understood you it was set at eight ?

A. I said it was set at eight.

Q. I did suppose by that it was not set long before eight. Was your ship or any ship in a condition to engage an enemy without a fore-top-sail ; was it a proper position for a ship ; would you think yourself authorized to go down now and seek an engagement without a fore-top-sail as you have described your ship without a fore-top-sail, with your rigging about your ears till ten o'clock at night, do you think yourself authorized to do so ?

A. I did not say till ten o'clock at night, Sir ; I said the people had liquor given them then, the work was over.

Q. When was it over ?

A. At ten o'clock.

Q. Then you was not able to get into your station till ten o'clock at night ; I do not mean to puzzle you ; I only desire to know, at so late an hour in the evening as your ship was in a condition, should you think yourself authorized before she was in such a condition you have described, to go down to seek an engagement ?

A. No, Sir.

Q. You said just now that you did think she was ?

A. I said she could go down.

Court. Where was you at the time you heard the cheers exchanged between the Fox and Formidable ?

A. On the fore-castle.

Q. Did you hear what passed, what conversation passed between the two ships ?

A. No, I did not.

The Admiral. Mr. Hills observed the Victory was upon the Formidable's lee bow, did he ever set her by compass ?

A. I did not set her.

Q. In your observations of her did you observe any signals she had flying at three and half after thro' the period of the afternoon till dark ?

A. I did not see any signals on board the Victory ?

Q. You were so employed you only cast your eye upon her, and saw her upon the lee bow ?

A. I saw her upon the lee bow at different times.

Q. And at no one of those times ever set her by compass ?

A. I did not set her by compass.

Q. But as a seaman, for a sea-officer is a seaman, can say positively to opinion, whether that being upon the lee bow was one, two, three, or four points ; I am sure I could answer that ?

A. I beg to know at what time ?

Q. I did not mean to ask what hour, but when the Victory passed the Formidable to leeward ?

A. She must have been upon her beam first of all, and then drawn forward, so she must have altered her bearing.

Q. I desire to know, what hour the Formidable and Victory passed each other ?

A. I do not recollect the hour of the day.

Q. I will ask you at one, or before the Fox spoke to you ?

A. If I can judge of time, she was then about a point or a point and an half upon the lee-bow of the Formidable.

Q. Was the Formidable close upon a wind at that time ?

A. It appeared so to me or nearly.

Q. Then at the latest part of the day, about half after seven, how did the Victory bear then to the Formidable, the point of the compass you have not said, but points according to your judgment.

A. I have already said, I did not know the hour

of the day, but late in the evening she was upon the lee-bow about one point.

Q. In regard, Sir, to the cheering, did the Formidable return the Fox's ? You say, the Fox cheered first ; how many cheers did the Formidable give her ?

A. I cannot charge my memory with that, I think one.

Q. There was no other cheer at any separate time given to the Fox ?

A. I don't remember any.

Sir JOHN LOCKART ROSS, Captain of the Shrewsbury, sworn.

Prosecutor. Q. I beg to ask Sir John, if he remembers the first time he saw the French fleet in the morning of the 27th of July ?

A. The Court have no objection, I suppose, to my looking at my minutes, which were taken at the time.

Court. No.

The Admiral. Were they taken at that time ?

A. They were taken at that time, day after day ; the very minute any observations were made.

At four o'clock in the morning, Sir, I saw the French fleet standing to the N. W.

Q. How long did they continue upon that tack ?

A. They began to wear about eight o'clock in the morning ?

Q. Did the van or the rear wear first ?

A. The Van.

Q. Did they wear successively in each other's wake ?

A. They did.

Q. How long did they continue to stand upon that tack after they had all wore ?

A. At half past nine I lost sight of them, being squally and thick to the S. W.

Q. After they had wore, as you described, successively in each other's wake, did they appear to be then in a line of battle ?

A. They did appear to be in a line of battle, after they had all wore, standing to the S. W.

Q. What distance might they be from the van division at that time ?

A. What time ?

Q. At four o'clock in the morning.

A. I cannot answer that exactly ; but at four o'clock in the morning I looked upon them to be eight or nine miles to windward of me.

Q. When did they change their tack again ?

A. At ten o'clock, when it cleared up, I saw several of them before the wind, the whole French fleet immediately hauled their wind to the N. W.

Q. Then they wore again to come to the lar-board tack, with their heads to come to the N. W.

A. Certainly.

Q. After they had their heads to the N. W. did they appear to you to be then in a line ?

A. They were more irregular than I had seen them any of the preceding days.

Q. I believe Sir John Ross was in one of the ships that was first fired upon by the French ; when the French began the attack, did they edge down upon that part of the fleet where you was and begin to fire upon you ?

A. I cannot say I recollect whether they bore away or not ; I was so attentive in conducting my own ship, that I cannot answer that question.

Q. I think, Sir, you have represented the first motion you observed of them, was wearing successively in each other's wake, and that they afterwards appeared to be formed in a line, that they wore the second time and attacked the British fleet ?

President. Did you say they attacked the British fleet ?

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A. No,

A. No, Sir; I said they wore and stood to the S. W.

Prosecutor. I understood you said, they fired upon you.

A. They fired the first shot certainly.

Q. They wore and attacked the British fleet?

A. I beg to be understood, Gentlemen, when I say the wearing a second time, that was when the cloud broke the south west squall, I then saw five or six, they immediately hauled their wind, and the whole fleet hauled their wind, and they were not so regular as before.

Prosecutor. I don't misunderstand you.

A. I should be sorry you did, Sir.

Q. You state, the first time they wore successively in each other's wakes, and appeared to be in a line of battle; that they afterwards wore again with their heads to the northward, and attacked the van of our fleet?

A. Certainly they fired first; they fired two shots without colours being hoisted.

Q. Do you consider their wearing twice, when they might have tacked, to be an indication of their avoiding coming to action, or an indication of their intending to come to action?

A. In answer to that, Sir, when I lost sight of them in the squall, I told my officers, that if the squall continued much longer, we should see them to leeward of us, judging from their former conduct, that they intended to push for Brest. When I saw six of them before the wind at one time, I rigged out the studding-sail and gib-boom, and bore away two points; I had no sooner ordered it, but they hauled their wind to the north west.

Q. As they hauled their wind to the north west, if you had kept your ship in the situation you was in, would you have been able to have fetched their van?

A. I believe that was answered before. I said the moment I saw them, I gave order to bear away two points, and to rig out the studding sail booms. I ordered it to be done, but it never was executed. I ordered them to bear away two points.

Q. Was your ship considerably to windward of the rest of the fleet at the time I am now speaking of?

A. I was a-head, but whether to windward I cannot take upon me to say, I was the headmost ship of all.

Q. You chased by signal that morning?

A. I did, Sir. At a quarter after five, Sir, my signal was made to chase to windward, being the weathermost ship of the fleet at that time.

Q. When the French got upon the larboard tack, and fired upon you, did they seem to you at that time to keep their wind?

A. They seemed to be close hauled, as French men generally go a point from the wind, they seemed to me to be upon a wind.

Q. That is no answer to my question.

A. It is only a remark, they seemed to me to be close upon a wind.

Q. Did they seem so after they had passed you, and the rest of our fleet, or at the time of passing each other, did they seem to you to keep their wind close, or to edge away?

A. Do you mean, Sir, while I was engaged myself, for that I can form no judgment of, because the smoke prevented my making any observations?

Q. I suppose you was close engaged, and could not take notice of it.

A. It was impossible for an officer in my situation then.

Q. After the red division passed the rear of the enemy, did not you in the Shrewsbury wear and stand for the enemy again, before any other ship of your division?

A. I did.

Q. Does Sir John remember his having declared, at the time that he directed that to be done, that he intended to attack the rearmost ship of the enemy as soon as he could get at her, or something to that purpose?

A. I do not recollect I ever did. I had no sooner wore, but I saw I should throw the ships that were standing towards me into the greatest confusion possible, and I wore back again almost immediately.

Q. I am apprehensive, Sir John's intentions for wearing were very laudable, I should be glad he would recollect what were his intentions by wearing at the time he first wore?

A. As there was no signal out for the line of battle, I certainly wore with intent to pursue the French, but recollecting momentarily, I saw it would throw the whole of our fleet into confusion if I did, I therefore immediately wore back again.

Q. Does Sir John Ross remember, after the Red division was out of the engagement, at any time taking notice of the Vice Admiral of the Blue while she remained engaged?

A. As to the Formidable, I don't remember any thing particular; but my remark was, that the Vice of the Blue's division, and several other ships, were engaged with the French fleet till near forty minutes after one; they having passed the French fleet, the signal was then hauled down for engaging, which was repeated by the Vice Admirals of the Red and Blue squadrons.

Q. Did you take notice of the Formidable laying her head toward the enemy again after she came out of action?

A. I did not; the reason of it was, at half past twelve, Vice Admiral Sir Robert Harland made the signal to tack, we then tacked and stood after the French fleet, and my attention was chiefly taken up in conducting my ship.

Q. At the time when the last of our ships came out of action, how was the Vice of the Red and his division situated, with respect to the rear of the enemy?

A. When the Red Squadron tacked and stood to the northward, the sternmost of the French fleet were then a-head, and upon our lee-bow, when we were close to the wind.

Q. After your division had tacked, did not you make sail, and draw up with the rear of the enemy?

A. We were under sail, but what sail were out I cannot pretend to say.

Q. Can you recollect whether some of you had your main sails set?

A. No, I did not minute it down here; and any thing I have not in memory nor here, I cannot speak of.

Q. Did the red division tack some time before the center division wore?

A. They did, Sir; not that I have exactly mentioned at what time the center division did wear, but we certainly tacked before they wore.

Q. As you tacked some time before they wore, I presume your division was considerably nearer the enemy than the center division?

A. The distance I cannot ascertain.

Q. Can you form a judgment of the distance the Admiral and the center division were from the rear of the enemy when they wore; the center only I mean.

A. I really cannot, Sir.

The court adjourned to the next day.

The

The Seventeenth Day's Proceedings, Jan. 26, 1779.

Sir JOHN ROSS called again.

Prosecutor. Q. If Captain Ross remembers the distance the Red division were situated beyond the enemy before they tack'd?

A. I cannot exactly tell. I have not minuted it, and therefore cannot exactly tell.

Q. Upon memory can you make an estimate?

A. At this distance of time I really cannot.

Q. Can you tell, Sir, who first made the signal for battle, the Vice Admiral of the Red, or the Commander in Chief?

A. At two P. M. the signal was made to form a line of battle a-head, a cable's length asunder.

Q. Who first made the signal for engaging, the signal for battle?

A. I did not see the signal for battle till I had passed the enemy's line of fire.

Q. I will ask Sir John Ross, whether he judges that a flag officer commanding a division has a right to make any signal in contradiction to those made by the Commander in Chief; such as calling in ships from chace, without the Commander in Chief first makes a signal for it?

A. I should imagine not, Sir.

Q. I think that Sir John Ross has stated, that the Red division was to windward of the rear of the enemy after the Red division had tacked, I would ask Sir John, if the Admiral, when he was standing towards the enemy, had continued the signal for battle out, whether the Red division, from the situation they were in, could not have bore down and attacked the enemy?

A. I don't think I mentioned before, that the signal for the line of battle was out.

Q. It is a supposition; if the signal for battle had been continued flying?

A. I say, I never saw it flying. I did not, as I recollect, yesterday or to-day, mention that the signal for the line of battle was flying.

Q. You have stated, the Red division was to windward of the rear of the enemy, after the Red division had tacked; if the Admiral, when he was standing towards the enemy, had continued the signal for battle out, could not the Red division, from the situation they were in, have bore down?

A. As we were to windward, we certainly could have edged down; the point is, how proper it would be in the situation the fleet was then in---we could have edged down.

Q. Were any part of the Red division dismasted?

A. Not as I know of.

Q. Were any part of the fleet dismasted?

A. Not as I observed.

Q. Was any part of the Red division otherwise disabled to your knowledge at that time?

A. The Shrewsbury was; as to what damages the other ships received, I cannot answer for.

Q. Do you mean, by the Shrewsbury being disabled, she was not fit to have gone into action immediately?

A. In half an hour she was fit for action.

Q. I understood yesterday, Sir John gave an account of his wearing his ship himself, with an intention to re-attack; I should be glad to know what were the particular damages of the Shrewsbury?

A. Would you have me particularize?

Q. Yes, some of the particular damages.

A. The running and fore spring stays, main tacks; top-sail ties, a great part of the running rigging; most of the sails, shot through in several places, one shot through the main mast, one shot through the rudder, one shot through the main piece of the rudder, and several other damages.

Q. From the very brisk fire that was kept up by the British ships that engaged, have you not reason to believe, that the enemy suffered in proportion to the English fleet.

A. I should imagine so; I could be no judge.

Adm. Arbuthnot. Q. Did the enemy appear to you to be much damaged in their sails and rigging?

A. I thought not.

Prosecutor. Did you observe the enemy when they broke up their line to be going to form a new line, with their heads to the southward, towards the British fleet?

A. I did observe them, Sir. The French fleet wore some time about half after three, with their heads to the southward.

Q. If the whole of the British fleet had immediately wore, after passing the rear of the enemy's line, might not the engagement have been immediately renewed, and the French prevented from forming a new line with their heads to the southward?—Whether the fleet was in a proper condition or not, is not the question.

A. It depends upon the situation the ships are in.

Q. If the whole of the British fleet had immediately wore, after passing the rear of the enemy's line—I will add to that—instead of standing at a distance to the southward?—Whether the British fleet was in a condition or not, is not the question.

A. I am summoned here to answer to questions relating to that action, particularly the 27th and 28th. I am ready to answer any questions that can be put to me. This is matter of opinion; I would answer it if I could: but I do not look upon myself as master of those affairs sufficient to answer it.

Court. You may give your opinion if you please; the short answer is, it is matter of opinion. If he don't chuse it, he need not answer it. He has made an answer in part to that, he said, it depended upon the situation the ships were in.

Prosecutor. If he is under any difficulty about answering it, he may put it to remembrance, or not forming a judgment, or just upon what conditions he pleases.

Sir John Ross. I said it depended entirely upon the condition of the fleet.

Court. You may give opinion or not, as you please.

Adm. Arbuthnot. I think, Sir, you said yesterday, that you did immediately wear, as soon as you had passed the French rear, and as soon as you had so done, you found that the ships were coming upon you, that would have entangled you, and you were obliged to wear again.

A. I did not say obliged; I said, I judged it proper.

Q. You did wear as soon as you had passed the enemy's fire immediately, and that you found, if you had continued to stand toward the French during the engagement, you would have put our fleet into confusion, and you thought proper to wear back again immediately?

A. It was momentary, Sir.

Q. You

Q. You said yesterday, you did immediately wear, as soon as you passed the rear of the enemy, and that as soon as you had wore, you found you should throw yourself with the ships that were standing towards you into confusion, and you thought it proper to wear back again almost instantaneously?

A. Yes, I did so.

Adm. Montagu. As most of the questions which are asked here are suppositions and opinions, I beg to know, whether, in your opinion, if the British fleet when they came out of action had received little or no damage, the Commander in Chief, Admiral Keppel, would not have renewed the action again immediately?

A. Most certainly he would.

Prosecutor. Q. The time that Sir John mentioned, that the ships would have been put into confusion by his wearing in the Shrewsbury, does he mean to speak of the ships of his own division that would be in that confusion?

A. No. I mean, if the British ships that came out of action first, had wore back again directly, and stood after the French fleet directly, it would have thrown themselves, and the rest of the British fleet that was coming up into the greatest confusion.

Q. When ships in the van tack before ships a-stern of them, do not the leading ships wear the ships that are following them, and does that put them into confusion?

A. The ships in the van tacking first, generally keep their wind: but in this case, two or three things are to be considered; the British fleet that was a-stern, and the French fleet; would you go to windward of them, and so far through one another? That is the confusion I mean. A ship in the van may always weather a ship in the stern.

Adm. Montagu. I beg to ask one question as to that; supposing the ships in the van had attempted to tack and missed stays, would it not have put those in the stern of them in great confusion?

A. It certainly would, Sir.

Prosecutor. Yesterday you placed the Red division to windward of the center division, and laying up to windward of the rear of the enemy; that was the situation I had in my view, when I grounded this question; but I shall not pursue it any farther, let it stand there.

Q. Did the Red division bear down into the Admiral's wake that afternoon, when the signal for the line of battle was flying, and the fleet upon the starboard tack?

A. What time in the afternoon do you mean?

Q. Any time in the afternoon.

A. At twenty minutes after three, the Admiral made a signal to wear, and half past three, the Admiral made a signal to bear down into his wake, the French fleet having some minutes before that wore with their heads to the southward, (I go on a little farther, Sir, it may save you the trouble of asking farther questions) standing in a line of battle; the Admiral made a signal to form the line of battle a-head a cable's length asunder, which was obeyed by the Red division.

Q. Did not the Red division first go down a-stern of the Admiral?

A. First go down, Sir! I don't understand you,

Q. Go down first into the Admiral's wake, before you went a-head of him.

A. The Vice Admiral of the Red made sail a-head to lead upon that tack, which I found out afterwards was in consequence of the orders of Admiral Keppel, to lead the fleet on that tack.

The Admiral. I shall bring proof, I sent to Sir Robert Harland to do what he did.

Prosecutor. Q. I wish to ask Sir John, if during the whole night of the 27th, any observations were made of the French fleet on board the Shrewsbury?

A. During the whole night we were under a very easy sail in a line of battle, a cable's length a-stern of Sir Robert Harland, the French fleet being to leeward of us.

Q. What observations did you make? Did you observe the French make any signals during that night?

A. I observed none myself; but was told about eleven, there were some rockets fired, but I did not see them myself, though I was on deck the whole night.

Q. Was it observed on board the Shrewsbury when they bore way in the night?

A. No.

Q. Do you remember what time you lost sight of them in the night?

A. I do not, it was dark weather.

Q. How many of them were in sight in the morning?

A. At four o'clock in the morning, I saw three sail of the French fleet bearing S. E. and by E. five or six miles distance, they bore away, set their studding sails, and made all the sail they could.

Q. Was no more of the French fleet seen from on board the Shrewsbury?

A. At five o'clock one of the lieutenants from the main-topmast head saw nine or ten sail bearing S. E. and by E. six or seven leagues.

Q. Was any signal made by the Shrewsbury, or any other ship in your division, to the Admiral, of seeing those ships?

A. There were several signals thrown out from the Admiral's ship, for several ships to chase.

Q. Was there any signal made by your ship, or any other of the Red division, of seeing those ships, the nine or ten sail?

A. The Shrewsbury made none, as I saw several pendants flying for several ships to chase; the Admiral had made several signals for ships to chase.

Q. There is another part of the question, if he will but attend to it, whether any other ship of the Red division made a signal to the Admiral of seeing those ships?

A. I observed none but part of the Red division, and Sir Robert Harland had set their top-gallant sails and bore away.

Q. Did you see the fleet?

A. I did not, Sir.

Q. Did any other ship?

A. I did not observe any.

Cross Examination.

Adm. Montagu. Sir John, did you see the British fleet run away, or have the appearance of a flight, or behave in such a manner as to give the French Admiral a pretence to claim a victory, and that the French Admiral with the French British fleet, pursued the fleet, and offered it battle on the 27th of July?

A. Most assuredly, at no period of that time did the British fleet have the appearance of running away.

Q. Then, Sir, did you see the honour of the British navy tarnished upon the 27th or 28th of July?

A. I did not in any respect.

Q. In the morning of the 28th, when you found the French fleet were gone away, did not you look upon

upon it, that they run away from the British fleet?

A. Certainly, Sir.

The Admiral. Could the ships in the close order they were in upon coming out of action, tack clear of each other, till they had stood on to increase their distance?

A. It was absolutely necessary to stand on.

Q. Was it by means of the Red division having stood on, that they got to windward; that they were able to lay up, and get to windward of the French fleet?

A. Certainly.

Q. I have three or four general questions to put; I should be glad to ask Sir John Ross, if I used every means as an officer to get up with and bring the French fleet to battle, from the 24th to the 27th of July?

A. He did, by carrying proper sail both by night and day.

Q. If I had pursued the French in a line of battle, would it have been possible to have preserved our nearness to them?

A. We could not.

Q. Was it not in the power, every day before mentioned, of the French to have brought on an action with the English fleet every one of those days?

A. Certainly, they being always to windward.

Q. If I had formed my line of battle the morning of the 27th, does Sir John Ross imagine I could have brought the French to battle that day?

A. No; because if the Admiral had made the signal for the line of battle, and the weathermost ships had bore down to the wake of the leewardmost ship, we should have been five leagues to leeward of the center of the French fleet.

Q. At eleven o'clock, or the exact time, whatever the time was, when the French was so near, and the change of wind gave advantage to the British fleet, must not the French Admiral have given up some of his rear ships, if he had not risked battle with the center of the fleet?

A. Most certainly, Sir.

Q. Did it ever appear to Sir John Ross, in the afternoon of the 27th, that I had given over intentions of renewing the fight, if I could have formed my line in time to have done it.

A. Certainly, at no time did I think so, because the signal for the line of battle was even out the whole night, it was on board the Shrewsbury.*

Q. Sir John being an old officer of long experience in the service, I therefore will venture to ask, and will desire him to inform the Court of any instance, if he knows any such, in which I negligently performed my duty on the 27th and 28th of July last?

A. I know of none, Sir. In every respect the Admiral discharged his duty, as far as I can be a judge, in every respect becoming a brave and gallant officer.

JOSEPH PEYTON, Esq; Captain of the Cumberland, sworn.

Prosecutor. I would ask Captain Peyton, if he recollects the time when he first saw the French fleet, upon the 27th in the morning?

A. Some time before seven o'clock in the morning, according to my memory, but it must have been earlier.

Q. How were they then standing, Sir?

A. Standing upon the larboard tacks, with their heads to the northward, the wind was westerly.

Q. Did you see them change their tack?

A. About eight o'clock, or half after eight; I will not be exact as to time, they wore, and formed their line as they wore on the other tack, leading large.

Q. Did they wear successively in each other's wakes, and so form the line?

A. They did.

Q. After they were all wore, did they appear to you to be in a line?

A. Yes, I think so, as far as I could judge of them at that distance.

Q. How long did they continue upon that tack?

A. I think it was till about ten o'clock; but I beg there may be a little latitude allowed me as to time.

Q. What did they do then?

A. Then they laid their heads the other way, they laid their heads to the northward again, if I may express myself so; I don't exactly remember how the wind was, they turned to the larboard tack.

Q. Can you recollect whether they tacked or wore then, or was it during the time there was a thick squall, that you did not see them? I am asking whether you did or not?

A. There was a thick squall about the time, but I cannot say exactly, whether they tacked or wore during that time, upon my memory, but I found them upon the other tack.

Court. You did not see them tack or wear?

A. It does not strike me now that I did; my eyes might not be upon them.

Q. Did you lose sight of them any part of that time?

A. There was a squall, but whether it was just at the time they tacked or no, I cannot be positive, as there was a squall.

Q. Did you lose sight of them any time between their being upon the starboard tack or the larboard tack?

A. The squall was such, that they were not wholly covered; I saw some part of them as they passed on, some discovered themselves at the time I am speaking of; generally speaking, it covered them, but they were here and there; sometimes I saw some of their ships, sometimes I saw others; it made a difference, and it is difficult to describe ships in a squall passing.

Q. You saw part of them then the whole time of the squall?

A. Different parts of them the whole time of the squall.

Q. You don't tell the Court, whether they had tack'd or wore?

A. I have mentioned, I cannot charge my memory, Sir?

Prosecutor. Q. When you saw them again upon the larboard tack, did their van appear to you to keep their wind close, or to edge down to attack the British fleet?

A. They appeared to me to keep their wind close, and their headmost ships to crowd sail as much as they could carry.

Q. When you saw them wear the first time, were they to windward?

A. Yes.

Q. By their being to windward before their wearing, and leading large afterwards, when they might have tacked and kept their wind, and afterwards changing their tacks, and attacking the English fleet; do you consider those motions as an indication of their intending to avoid coming to an engagement, or of their intention to do so?

A. About the time they wore, I had my eye upon them, and I then thought that their intentions were different from what they had shewn the several days before that we had been pursuing

* This was a mistake in hurry of expression, which the witness afterwards recollecting, in a short time sent a letter to the President about, upon which the Court were unanimous he should be called in and allowed to rectify it, which he did. See p. 103

them; but when they tacked, or came to the larboard tack, and, as I saw, crowded sail, and kept their wind close with their headmost ships as they did, I then thought that they had an inclination to avoid an action, and as I had had it in my idea several days before, on the 20th in the morning, that their fleet outailed ours as a fleet in a body, it was rather a confirmation to me, in my own idea, they did not mean to come to action, as they thought they could get off when they pleased.

Q. Did they continue to crowd sail, after the whole of them had got their heads that way, or did they shorten sail, and engage the fleet under their top sails only, and most of them upon their top sails lowered on their cap?

A. They stood a very little while on their larboard tack, before (I don't exactly recollect whether) the fourth or fifth, but it was not the third and three or four headmost ships that bore down, but it was one a-stern of them, whatever number it was, began firing upon the Monarque, or it appeared to me to be the Monarque they fired at, and from whence the action began.

Q. If I understand you right, the enemy edged down and fired upon the Monarque?

A. Yes.

Q. Did you happen to observe after that, whether they continued to range along the English fleet with a crowded sail, or shortened sail?

A. After the firing began, which was very unexpected to me, what I saw of their ships was under different sail, some brought too, to fire at us; others continued under other sort of sail, which would naturally keep company with their line, but not with the appearance of crowding sail after the fire had began.

Q. Was the signal for engaging first on board the Queen?

A. I cannot say.

Q. Whilst the Red division was passing the enemy, were you a-head or a-stern of the Queen?

A. I was upon the Queen's weather quarter.

Q. Was you at any time obstructed in your fire by other ships coming in your way, or you in the way of others? Was there any firing over you?

A. The Monarque was before the Cumberland's weather beam, but no obstruction to her firing; the enemy passing a-stern of the Monarque, brought them open to us, and we fired as they presented themselves to us. I don't know of any ship firing over the Cumberland.

Q. After the Red division had passed the rear of the enemy, when the division tacked, did not they look up to windward of the rear of the enemy?

A. Yes. I beg pardon, when speaking of the ships of the Red division, I am speaking of the Cumberland, and the ships that were near her; the Queen, for instance, we followed very close, my memory will not take in the whole division, the Cumberland looked to windward of them.

Q. Does Captain Peyton know that the whole division did not tack and stand the same way with their admiral?

A. I don't know that they did not; I believe they did.

Q. Did you observe the Admiral of the center division, after they had passed the rear of the enemy?

A. I remember seeing the Victory as we passed her, after we came to the larboard tack, and we cheered the Victory as we went by.

Q. Did you observe seeing the Admiral of the center division afterwards wear?

A. I don't recollect particularly as to time, but I have a general idea, that they wore as well as the van division.

Q. After the center division had wore, and had their heads the same way with the van division, was the van division then a-head, or to windward of the center division, or how situated from them?

A. The van division had for some time bore down, and, according to my memory, the center division did the same.

Q. During that time, was your van division a-head and to windward withal of the center division, during the time they both were supposed bearing down.

A. I cannot tell.

Q. After the van division had tacked or wore, whatever it was, did you make sail on that tack, or shorten sail, or draw up with the rear of the enemy, or how?

A. On our bearing up, we neared the enemy, and passed them at about two guns shot as to distance, as near as I can judge.

Q. You mean to windward of them?

A. To windward of them, then we hauled our wind upon the starboard tack.

Q. To what distance does Captain Peyton, in his recollection, judge the center division stood in the rear of the enemy before they changed their tack, and stood to the rear of the enemy again?

A. I beg Sir Hugh Palliser to state his time.

Q. At the time the center division stood towards the enemy again?

A. I cannot judge of the distance.

Q. To what distance do you reckon the van division stood before they tacked or wore?

A. To the best recollection of time I can make, the firing ceased about half past twelve at noon, and the Vice Admiral of the Red tacked about ten o'clock.

Q. Does he remember the signal for battle being hauled down?

A. No.

Q. From the situation you have described the van division to be in, about two guns shot to windward of the rear of the enemy, and the center division standing toward the enemy, if the signal for battle had continued flying, and the body of the fleet had continued advancing towards the enemy, did any reason appear to you at that time against re-attacking the enemy?

The Admiral. I must beg to observe, Captain Peyton has said no such thing, he said, when they wore within two guns shot, he imagined the French were upon the starboard tack; now the question is put as if they were within two guns shot upon the larboard tack: if you will read the former question, you will find it.

Prosecutor. Give me leave to make my observation upon what Captain Peyton did say; they passed them within two guns shot upon their starboard tack, then does it not follow, they had been within that distance upon the larboard tack?

The Admiral. No conclusions, if you please; his words were, they stood large upon the starboard tack.

Captain Peyton. I answer, that we wore and came to the starboard tack.

Prosecutor. There was a time when he was with that two guns shot.

The Admiral. It was not while we were upon the larboard tack.

Prosecutor. Q. I wish Captain Peyton would be so good to explain himself, if there is any doubt of his being within two guns shot, or how, and when?

A. This is matter of opinion.

Q. I don't press any gentleman to any matter of opinion that is not inclined to give it, by no means.

Adm. Montagu. You may give your opinion if you please.

A. I

A. I conceive that against the latter part of the oath I took; opinion is subject to error; I will swear to nothing but the truth.

Prosecutor. I wish the words may be entered, as they appear to me a very proper reason why you declined giving your opinion; that may be annexed to your declaring why you would not answer my question.

Q. Did you take notice when the last of the British fleet came out of action?

A. I cannot say I did.

Q. Did you take notice of the Vice Admiral of the Blue?

A. I saw the Vice Admiral of the Blue to leeward of the Red division, and so were presented to the van of the French fleet, when drawing to their starboard tack.

Mr. President. Sir John Ross has sent me a note; he begs leave to explain himself upon it; if it is not irregular, I now wish he may be called in, and not kept in waiting for an hour.

The Admiral. I have no objection, I am sure.

Prosecutor. I should be extremely sorry, any gentleman should be prevented from giving an explanation himself, if he has mistaken or misunderstood any question that has been put him.

The Court unanimously were of opinion he should be called in.

President to Captain Ross. We understand you wish to explain yourself.

Sir John Ross. It is in answer to a question of Admiral Keppel's.

President. Is that the note you sent just now?

A. Yes.

The note read.

The question of Admiral Keppel's is nearly as follows: in the afternoon of the 27th, in Sir John Ross's opinion, did I shew any intention of not renewing the action that evening, could I have formed my line in time? The answer is, Certainly not; because the signal for the line was flying at dark, and it was kept up on board the Shrewsbury all night long. Upon recollection, I find that part of the above answer as noted is a mistake; I meant, the Shrewsbury kept her station in the line all night, instead of the signal being flying on board the Shrewsbury all night.

Adm. Montague. Were your colours hoisted all night?

A. Yes, Sir, they were.

President. Q. Captain Peyton, Did you observe the French, during that afternoon, to continue to form in a new line, with their heads on the starboard tack?

A. Yes.

Q. Have you any reason to think that the French fleet did not suffer in proportion to the English fleet during the engagement, considering the brisk fire our ships kept up?

A. They did not appear to me to have suffered so much in their masts and yards as our ships had done; there was one ship of theirs that was more disabled in her masts and yards than any of ours.

Q. Did you observe any ships dismasted upon either side?

A. No.

Q. Do you know of any ship in the Red division being disabled at that time—do you know it at that time?

A. The Monarque had her foretop-sail yard carried away; but I don't recollect any other ships very particularly.

Q. Do you remember seeing the Admiral when he laid his head to the southward again?

A. It does not strike me just now.

Q. Do you remember when you first took notice of his being in that situation?

A. I must have seen, as we were following him with the van division, to go a-head of him, but the particular time I cannot tell, that must be the only time, I believe; nothing strikes me particularly, so as to make out a particular answer to your question, Sir.

Q. Captain Peyton has said, he observed the French to begin to form a new line, with their heads to the southward, was not that standing towards the British fleet?

A. Yes.

Q. Then, Sir, did it appear to Captain Peyton, by the enemy's standing towards the British fleet, and forming a new line, that they shewed a disposition to renew the engagement or to avoid it?

A. To renew it.

Q. If the Admiral with the ships that were with him, and the Vice Admiral of the Red with his division, had advanced upon the enemy, at the time they were beginning to form a new line, and attacked them, would it not have prevented them from forming a new line?

A. I say, as matter of opinion I decline answering it. I decline answering to any matter of opinion.

Prosecutor. I understand it.

Q. I must ask Captain Peyton, whether the Red division bore down into the Admiral's wake that afternoon?

A. The Red division bore down, but I don't recollect whether directly in the Admiral's wake; there was a signal to bear down, and the van division bore down and passed the Admiral, to take their station a-head of him, upon the starboard tack.

Q. I ask whether you did not go into his wake, or nearly into his wake, before you proceeded into your proper station?

A. I don't recollect whether I did or not.

Q. Does Captain Peyton remember any notice being taken of the French fleet during that night in the night?

A. Their lights were seen, and they fired some rockets about eleven o'clock.

Q. Did you perceive them to bear away in the night, Sir?

A. No, Sir.

Q. How many were in sight in the morning of the Cumberland?

A. Three.

Q. Do you know of any signal being made by any ship of a greater number being in sight?

A. By the Queen and by the Monarque, the usual signal made for seeing the fleet by those two ships.

Court. Q. What was the signal for it?

A. The top-gallant sheets flying, the yard hoisted up.

Q. What became of the top-sail yards, were they lowered?

A. I have no idea about them. I suppose not.

The Court ordered the 13th article of signals by day to be read, which is an account of the signal for discovery of strange ships.

Q. My reason for asking that was, it had been told before to the Court, they were nine or ten leagues off, and therefore that signal could not be discovered.

A. I don't remember that being made. I remember nothing but the top-gallant sails flying and the yard hoisted up, and I understood it as a signal for seeing the French fleet.

Q. Did you see them?

A. No, Sir.

Q. Nor from your ship were they seen?

A. Nor from our ship. I sent people up to the mast head on purpose in the morning, and they did not see them, as soon as day-light, before gun firing.

Q. Did the British fleet chase those three ships you have mentioned, or the fleet which was seen?

A. I think we stood towards them some little time, but I am not clear in my recollection how long.

Q. What sort of weather was it that morning does Captain Peyton recollect?

A. Moderate weather.

Q. Do you recollect how the wind was?

A. I don't recollect very well, the wind was to northward of the west I believe.

Q. With that wind and moderate weather does Captain Peyton consider Ushant as a lee-shore dangerous to approach, being summer time and short nights.

A. The question answers itself.

Q. Do you mean it is not so?

A. There can be no danger in moderate weather undoubtedly, in going towards the shore.

Cross Examination.

Adm. Montagu. Q. I do not ask you, Sir, as matter of opinion, because you have declared before, you would not answer to matter of opinion, therefore, did you see the British fleet run away, or have the appearance of flight, or behave in such a manner as to give the French Admiral a pretence to claim a victory, and that the French Admiral pursued the British fleet, and offered it battle?

A. There are many questions upon one run, as it were.

Adm. Montagu. I will ask them singly, if you please.

A. If you please.

Q. Did you see the British fleet run away?

A. No, Sir.

Prosecutor. I observe, as I have done once before, that is no words of the charge.

Adm. Montagu. It is so far words of the charge, as to publish to the world, that the British fleet run away, they are the words of the charge.

The Admiral. If I may be allowed to say a word; the Prosecutor has asked twenty and twenty questions, whether the Victory (that is, the Admiral) did not carry a preft-up sail, and therefore the question is proper.

Adm. Montagu. I should be very glad, as a member of this Court, to have this question asked; I have a right to put it before any objection is made to it; if the Court think I am asking an improper one, they are to correct me. I beg to have an answer to the question I have before me, and that I may not be interrupted. I first ask, did you see the British fleet run away?

A. No.

[The Prosecutor desired to have his objection taken down.

Refused by the Court.]

Adm. Montagu. It is the same question I asked before, and it was not objected to before, why it should be objected to this evidence I cannot tell.

Prosecutor. I only observe, it is not the words of the charge.

Court. What was your answer to the question?

A. No.

Q. Did you see the British fleet have the appearance of flight that day?

A. No.

Q. Did you see the Admiral of the French fleet

pursue it with his fleet, and offer it battle?

A. The French Admiral followed the fleet of England and offered it battle undoubtedly.

Q. Did you see the honour of the British navy tarnished upon the 27th or 28th of July?

A. Is not that matter of opinion?

Q. I ask whether you saw it;

A. No.

Q. I don't ask your opinion. Did not you see it?

A. No: if that is the meaning of your words, no, by no means in the world.

Q. When the French fleet, as you say, pursued it, and offered it battle, did you see them the next morning of the 28th? Were they not run away?

A. I did not say pursued but followed.

Q. I beg your pardon then, followed it and offered it battle, did you see them the next day, the morning of the 28th? Were they not run away?

A. Yes, they were run away, I did not see them.

Adm. Roddam. Q. You say, the French fleet offered the English battle, when they formed their line upon the starboard tack, if they had been inclined to renew the action again, as you have said, could they not have fetched within pistol shot of the British fleet, and engaged, if they had pleased?

A. I cannot judge how near they fetched to the English fleet; they offered it battle, that was my word. I will explain it; I mentioned, offered battle, and the meaning of that is, that they ranged themselves to leeward of the English at such a distance to windward, as to admit of the English fleet attacking them whenever the Commander in Chief of that fleet thought it proper.

Court. Please to give an account of the material damages your ship received.

A. They are so trifling, it is scarce to be mentioned. There was one shot through the bowsprit, which occasioned it being taken out, to have a new one; nothing else of any consequence; the sails and rigging, and those kind of things, were cut.

The Admiral. Q. I will ask Captain Peyton, at the time that he describes the French fleet to have offered the English fleet battle, whether the English Admiral had then been able to form his line?

A. The line was not formed till very late in the evening.

Q. Had not the signal for the line been flying the whole afternoon, I mean, after standing upon the starboard tack, and before.

A. In this minute* I believe it is exact, there is a signal for the line.

Q. When was it first let fly? Was it in the afternoon?

A. Yes, from two o'clock.

Q. And did it appear to Captain Peyton, that I had given over my intentions of renewing the fight in the afternoon, if I could have formed my line in time to have done it?

A. As to the Admiral's intentions, to be sure I could form no judgment; but as to the disposition of the ships and their movements, there were full endeavours to form the line from that time the signal was made, so far as the disabled ships would allow it.

Q. I will ask Captain Peyton, if I used every means (as an officer) to get up with and bring the French to battle from the 24th to the 27th of July?

A. If the Admiral means, that I saw that he did not use the means, I answer no; but as to the other part of the question, it is not with me, I cannot judge whether the Admiral did or not things which I did not see.

Q. If I had pursued the French fleet in a line of battle, would it have been possible to have preserved our nearness with them the whole time, the 24th, 25th, 26th and 27th of July?

A. I cannot judge.

Q. Was

* Looking at some minutes of his own.

Q. Was it not in the power of the French, every one of the preceding days, to have brought on action with the English fleet?

A. Some part of the time there was too much wind for the two fleets to wish to come to action; but as they were to windward, I think, any time after the 23d, they might have taken their own time and come to action.

Q. Captain Peyton has, in his description of the French fleet wearing between eight and nine o'clock, expressed their mode of wearing very intelligently, but it remains upon my thoughts, as if, from the time that they had formed in a line, that they had been running large; now after they had been forming their line, going from the larboard tacks, when they wore upon the starboard tack, in the morning about nine o'clock, whether they did not keep their wind and carry their usual preft-up sail from the English fleet?

A. I, in my former answer, said, they wore in succession, or nearly to words of that sort, and that they formed their line large, steering large, that they did not keep their wind of course.

Q. Then I understand, after they were upon the starboard tack, they never again kept on their wind?

A. They steered large as much as I ever saw, they kept away steering large, it was squally at that time for a very short time; they wore about half after eight, and it was about ten when you tacked; they had previously tacked. Upon the English fleet tacking, the French fleet got upon the other tack; but while they were upon the starboard tack, they were steering large, as far as I ever saw, and not a preft sail, but steering the other way, meaning to come nearer, as my idea was, to us.

Q. Then if that steering large was to allow the English fleet to fight them, when the English fleet lay up for their rear, if they had intended action, would they not have shortened sail for the British fleet to have ranged up with them upon the same tack and not the contrary tack? This I look upon to be a question to an officer from an officer.

A. I have a right to answer that. In the former part of my evidence, I think I have said, the French fleet, when they came upon their larboard tack, kept their wind, and at that time I had an idea they did not intend to come to action.

Q. I will ask you what number of ships of the Red division were with their Admiral when he tacked in the rear of the enemy after having passed them?

A. I believe they were all there. I have no idea of any ship being left behind. The Monarque continued on, and she was the most disabled.

Q. Are you sure the Monarque was there?

A. I only speak from belief, I am not sure.

Q. Was the Duke there?

A. She was not in my eye, and it is not in my remembrance; but I have no idea why she should not.

Q. Does Captain Peyton recollect what time it was he cheered the Admiral in passing?

A. I think it must have been about one or two o'clock.

Q. Was the Admiral on the starboard or larboard tack at that time?

A. The Admiral was upon the starboard tack.

Q. Do you recollect whether the Admiral put a signal up to wear at that time?

A. I think not.

Q. Was the fleet on the starboard tack standing to the southward, at the time you state the French fleet to be two guns shot to leeward from you?

A. The English fleet, that is, the van, with what I recollect of the center, were bearing down to leeward, and drawing towards the starboard tack, the French to leeward of the van, and presenting themselves, as it were to each other, they

were upon the larboard bow; we upon the one, they upon the other tack.

Q. Where was the Vice Admiral of the Blue at this time and his division?

A. I cannot exactly tell the place where the Vice Admiral of the Blue and his division was; I saw the Vice of the Blue early in the afternoon, after they had passed the ships to leeward, but at this time I cannot tell exactly.

Q. When the French first formed their line of battle upon the starboard tack, if they had set a good deal of sail, might they not have come up presently to the English rear; and do you recollect whether they did not come up to leeward under their top sails?

A. If they had made all the sail they could, undoubtedly; as to their coming up under top sails, some of them had their fore sail and stay sail gib, and the ships according to their difference of going I suppose had different sail.

Q. With crippled ships that had been in action, was it safe to go down on a lee-shore upon an enemy's coast, trusting for fine good weather when they came there?

A. I don't know what the Vice Admiral means by a lee-shore.

Q. I will state that to Captain Peyton. He stated the wind north west, or the northward of the west; I mean by a lee-shore, it blows on the land; you are to entangle yourself with, to go in sight of an enemy's coast, when the wind is fair to carry the French in with safety.

A. In this instance, Sir, I don't know that there was any lee-shore; we were so far off the land, I had no conception of any lee-shore.

Q. Can a crippled fleet go into sight of any land with safety, the same as a fleet that is not crippled?

A. That is another question: there can be no doubt about that; it is very plain, no crippled ships will entangle themselves with land, where they cannot be able to clear themselves. This is all matter of opinion, I think, which I declined giving before.

Q. But opinion and knowledge of an officer is very becoming to answer, and I will only ask him, how far on the 28th he was from Ushant, and how it bore?

A. I have not my journal or my log with me, and therefore cannot say.

The Admiral. I am very well satisfied if he says he does not know.

Court. Q. You have some judgment yourself of the distance at the time?

A. I have an idea of about thirty or forty leagues, towards forty leagues.

Q. Do you imagine, at that time, Sir, that 28th, when the French fleet was at such a great distance, you could have come up with them before they had got into Brest? Do you imagine there was any prospect of it at the time you say a signal was made for seeing them?

A. I have mentioned in the former part of my evidence, that I thought from all circumstances the French fleet sailed better than we did.

Q. Therefore you did not imagine you could come up with them, and from thence, as there were crippled ships besides, there was still less likelihood of their coming up with them; if you had come up with them, would you have engaged them upon a lee-shore with those disabled ships? If they had come with them, was there not danger from the lee-shore for the crippled ships?

A. In bad weather, undoubtedly.

Q. Can you recollect how long time it appeared to you, that the French fleet offered the English battle?

A. The greater part of the afternoon of the 27th. I cannot be exact as to the time.

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Q. Did it appear to you at that time, that the whole of the English fleet was in a condition and situation to give them battle?

A. I have mentioned that the English fleet was not in a line till towards the close of the evening, and from thence I imagine not in a proper state.

Q. Were they in a condition?

A. The word condition I don't very well understand. Do you mean with regard to the disposition of the ships, or with regard to their being disabled?

Q. I mean with regard to their being disabled.

A. I did not see but the English fleet was in a condition to give them battle.

Q. The whole of the fleet in a condition?

A. Taking it in a body, taking it in general speaking, if you mean no crippled ships—

Q. I mean crippled ships of course amongst them, as I said the whole fleet.

A. Crippled ships could not come into a line; as the whole afternoon was taken up in forming a line.

Q. That line, I suppose you mean to be understood, could not be formed, because they were not in a condition to form.

A. It was from their dispersed situation; there were six or seven ships appeared to be repairing themselves, and of course were not in a condition to come into action. If you mean that as a part of your question, I answer it directly to be sure, as words are differently understood sometimes.

Adm. Montagu. Q. During the course of the evidence, and the questions that have been asked you, you said, that some parts of the time the weather was such, it was improper for the French to come down and engage the English that were to leeward. Had you commanded a Squadron of British ships, and was to windward in the same manner the French were, and the French ships to leeward, should you have hesitated one moment in going down to to engage them as a British officer?

A. It seems to me, as if it was matter of opinion.

Q. I ask you whether you would not go and engage, as long as two fleets can be brought together to engage?

A. As a British officer, it would be my duty to carry the fleet down and engage; I answer, yes; plainly.

The Court adjourned to the next day.

Eighteenth Day's Proceedings, Jan. 27, 1779.

EVELYN SUTTON, Captain of the Proserpine, sworn.

Prosecutor. Q. I would ask Captain Sutton, if he was stationed the night of the 23d of July, to watch the motions of the French fleet?

A. The charge mentions only the 27th and 28th, I think.

Q. You can answer the question, where you was stationed?

A. Am I to answer to the 23d and 24th?

Court. You are at liberty, Captain Sutton, to answer, if you please.

A. I come prepared here to answer to the 27th and 28th, according as the charge specifies.

Q. I have nothing to ask you of any other day, except your being so stationed to watch the motions of the French fleet; I don't mean to trouble you with any other day except the 27th and 28th?

The first question read.

A. I was.

Q. What orders did you receive for that purpose?

A. To keep between the French fleet and the English.

The Admiral. It is an examination, Captain Sutton is not prepared for at all to those days; if it is of any use to you (meaning the Prosecutor) or the Court, I will say I gave Captain Sutton orders to do it; I shall own every order I gave, and I shall not be ashamed of owning it.

Prosecutor. I have very little to ask, you need not be under any sort of uneasiness.

A. I am under no sort of uneasiness.

Q. I will mention it before I put the question: I mean only to ask him, what situation he was in, and what observations he made upon the fleet that night; that is all I mean to ask Captain Sutton: I apprehend, he cannot be at a loss to answer those plain questions?

The Admiral. If it is meant to imply any thing against me, I naturally shall oppose it; because the 27th and 28th, are the days I am accused of not doing my duty.

Prosecutor. Q. Upon a former occasion, I said it was not to lead to any additional charge, but merely relative to the charge itself, as it stands?

The Admiral. With submission to the Court, this is really going very much out of the way.

Court. You may answer the question or not, as you please.

Witness. I don't recollect particulars so far back as the 23d.

The Admiral. If he means to ask, whether the wind was fair for the French fleet to go into Brest that night, I will answer, yes it was.

Prosecutor. Then what I meant to ask him, is admitted?

Q. I would ask Captain Sutton, if he received any orders, in the afternoon of the 27th, to carry any message from the Admiral, to any part of the fleet that afternoon?

A. I did.

Q. What time was the first order you received?

A. Between two and three.

Q. What were the orders?

A. To desire Sir Robert Harland to keep the position he was in, and lead on the same tack he was then upon,

Q. What was the next message?

A. The next was to fall astern of the Victory.

Q. What time was the next?

A. Both were given at the same time, when I came away from the Victory.

Q. Then you put but one of them into execution?

A. No, Sir.

Q. What was the second order?

A. To fall astern of the Victory.

Q. Which of those orders did you deliver to the Queen?

A. The last.

Q. Had you any other order or message from the Admiral that afternoon.

A. No.

Q. What time was it when you delivered that message to the Queen?

A. About two o'clock, or between two and three.

Q. Can you make the distinction, when did you deliver it?

A. About three, I cannot say exactly, or between three and four.

Q. Whereabouts was the Red Division at that time, with respect to the rear of the enemy's fleet?

A. They were to windward a few of them, not the whole division.

Q. What did that division do in consequence of that message, did you observe them to bear down?

A. They were bearing down, when I hailed the Vice Admiral Sir Robert Harland.

Q. Did they bear down and fall astern of the Admiral, agreeable to the directions you carried?

A. I think they did.

Q. Was that station in the line of battle the station

tion of the Vice Admiral of the Red, or the Vice of the Blue.

A. The Vice Admiral of the Blue.

Cross examination by the Admiral.

Q. When you first came on board the Victory, did I give you orders to go to Sir Robert Harland, with orders to him to lead on the larboard tack?

A. Yes, Sir, the first orders.

Q. Was the Victory then upon the larboard tack?

A. She was.

Q. Then, Sir, what I would wish to clear to the Court was this, that before you were able to get away in consequence of my orders, I thought it proper to wear to the southward.

A. Yes, Sir.

Q. That I wore to the southward, and then gave you the orders for Sir Robert Harland to fall altern of the Victory, was the second order that is to clear one from the other?

A. I went away with those orders, and the Victory wore immediately afterwards.

No more questions were asked Captain Sutton.

CONSTANTINE JOHN Lord MULGRAVE,
Captain of the Courageux, sworn.

Lord Mulgrave. I suppose the Court will have no objection to my looking at any memorandum in point of date, that I may speak as accurate as I can.

Prosecutor. Q. I would ask Lord Mulgrave, when he first saw the French fleet in the morning of the 27th of July?

A. I don't recollect the time?

Q. At the time you did take notice of them, do you recollect which way they was standing?

A. I do not—I could wish to be understood by the Court, when I say I do not—I could, upon recollection, speak; but I wish, in the evidence I give, to say only those things that dwell certainly upon my mind, and not to any recollection that is not clear; I would add to that, my attention was chiefly taken up with my own ship, and observing the motions, and watching the signals of the Admiral.

Q. Does your Lordship recollect any part of that morning, before the action began, observing the French fleet to tack or wear, or which tack they were on?

A. The weather was hazy, and the enemy at a considerable distance from me, I therefore cannot give an account with that accuracy with which I would wish to give; as an evidence, I certainly did see them tack, but could not be so precise in time, or other circumstances, as, I think, ought to have any weight in my evidence; there were other ships much nearer.

Q. Does it occur to your Lordship's memory, upon recollection, whether they struck you at any time to be in a line?

A. They appeared to me to be in a line; how far the line may be regular or no, or how far from different points of view, one may be deceived, I cannot take upon me to say, at so great distance, and in such weather; as I saw them upon that morning, they appeared to me to be at a great distance.

Q. What part of the French fleet did your Lordship begin to engage?

A. I could be very accurate as to time, I believe; but I did not really attend to the circumstances of what part of it; there were many ships a head of the French Admiral: the Court will easily believe, that at that time I had enough to do to attend to my own ship, and watch the Admiral's motions, to be ready to obey them instantly. I was fired upon by several of the French ships, before I came near the Admiral.

Q. Did it appear to your Lordship, that the

French fleet edged down upon the British fleet as they engaged?

A. It did appear so; I must explain myself, my idea was from the position of the ships as passed mine, being almost close upon a wind, and laying our broadsides almost close to one another, I think they must have edged.

Court. Q. Did you observe they edged down before the engagement began?

A. I was much more attentive to the motions of the Admiral, in whose division I was, than to that of the enemy; because it was from thence I was to take my conduct, and not from any observations I made upon the enemy, till I was engaged.

Prosecutor. Q. I believe the Courageux was in general engaged as close, and some part of the action closer, than any other ship in the fleet. I should be glad to know, if it came within your Lordship's observation, whether the French engaged under more sail than the British fleet engaged under?

A. I hope the Court will forgive me, if I submit a wish of mine to them, that all questions, that are put to me, may relate plainly to the fact that I am asked, and not contain any introductory matter, that I may appear to give an answer to, when I don't mean it—I shall very much object to give an answer who engaged first, and who did not, and every expression of that sort—I wish not to give an opinion upon that sort of preface to a question; if the question is reduced to a plain point, I will give the best answer I can.

Q. I only wish your Lordship, being better able to speak to it than others, if it happened to be in your Lordship's observation to say, whether the sail they carried, was more or less than the British fleet carried during the action.

I will give your Lordship time to recollect.

A. The French fleet appeared to me to carry a great deal of sail, some more than others, as must always be the case in a fleet that keep company together.

Q. Did your Lordship observe any of them carried more than their top sails and fore sails during the action, and whether many of them had only their top sails, and some of them lowered, as your Lordship ranged along?

A. I did not observe any of them with their top sails lowered; I cannot speak positively upon my recollection, whether they did carry more than top sails and foresails; but, I think, I remember some of them with their main sails; I think, though I would not be understood to speak positively, the impression at the time was, that they carried a great deal of sail, and had fresh way through the water, some of them appeared attentive to their Admiral, and to carry sail to keep in a station by them.

Q. Does it happen to be in your Lordship's remembrance, to observe what sail the French Admiral himself engaged under?

A. I did not at the time that I saw him; I had not leisure to make very accurate observations of what sail he was under.

Q. Can your Lordship say, who first made the signal for engaging, was it the Vice of the Red, or the Commander in Chief?

A. I cannot; from the moment I saw the firing, my eyes were turned to the Admiral's flag, and there they were fixed till he made his signal; when I say fixed, I don't mean I might never look off, but my sole intention out of the ship was directed to the Admiral.

Q. When the Victory passed the sternmost ship of the enemy's line, in what situation was your Lordship, with respect to the Victory, at that time?

A. I don't know the precise time when the Victory had passed the French fleet, I had passed before, and from the time I had passed, I was endeavouring to put the ship I commanded in a situation

to

to obey any farther orders. I was a-head of the Admiral certainly.

Q. Can your Lordship speak to the time and the distance the Admiral stood, beyond the rear of the enemy, before he wore?

A. I have before said, I do not know the precise time the Admiral had passed the last ships of the enemy; I can tell the time I passed her, and I can tell the time the Admiral did wear, at least, that he made the signal to wear, if that will answer the question.

Q. You will please to mention the time, Sir.

A. The time; that there may be no mistake in the time, I will state the comparison, and the intervals, I believe, will shew the time, and reconcile it, I believe, with any other account: the watch, which these minutes were taken by, was compared with mine, and was a quarter of an hour slower than mine, by my watch forty minutes after twelve, when I had passed the enemy, it was fifteen minutes past eleven by that watch when the French began firing, and twenty minutes past eleven, when the Admiral hoisted the red flag at the foretop-mast head. The Admiral made the signal to wear at eighteen minutes past one, it appeared to me a very short time.

Q. Does your Lordship remember what sail the Victory had set?

A. I remember, before the firing began, I don't mean before the French firing, but before I began to fire, when I passed the Victory, the sail she had set.

Q. I mean after she passed the enemy's rear?

A. I do not.

Q. Your Lordship has not mentioned whether you could make any estimation of the distance the Victory was from the rear of the enemy?

A. I can describe the distance no other way, than by the dates I have given; at forty minutes past twelve I saw the Victory engaged, when I had passed the enemy; at eighteen minutes past one, the signal was made to wear; what part of the time between forty minutes after twelve and eighteen minutes past one, the Victory was in action, I do not know. I speak by the watch which it was taken by, forty minutes past twelve.

Q. Did your Lordship take notice of the motions and situations of the Red Division?

A. At about one, the Queen, with the Cumberland, and some others of the Red Division, passed me, standing to the northward upon the other tack, I was still on the starboard tack, repairing my damages, and they passed me on the larboard tack, with a good deal of sail, having tacked before; it was about one, or a quarter of an hour at least, before the signal was made to wear; I believe (the Monarque, one of the Red Division, was laying disabled, with her foretop-sail yard down just to leeward of me) by that time, I mean the signal was to wear, that was the time I took notice of it.

Q. I think his Lordship said, the Red Division was standing upon the other tack with a good deal of sail?

A. They were.

Q. Did your Lordship observe the Red Division after that time, when they shortened sail?

A. I did not.

Q. If your Lordship did not observe them at the time they shortened sail, did you take notice when they had shortened sail?

A. I did not take notice of them till they passed me to take their station in the line in the evening.

Q. Did your Lordship observe when the signal for engaging was hauled down?

A. I did at forty-one minutes past one.

Q. Was that after the Admiral had wore and laid his head towards the enemy?

A. It was after the Admiral had wore, had made his signal to wear, and wore immediately.

Q. At eighteen minutes past one, he was upon

the larboard tack, then he was upon the larboard tack when the signal was hauled down?

A. My answer is, the Admiral was upon the larboard tack when the signal for engaging was hauled down at forty-one minutes past one.

Q. Was it observed by your Lordship on board of your ship, when the French fleet broke up their line, and began to steer the southward?

A. I cannot answer that question; I observed from my station, part of the French ships when they were standing to the southward, because it related to my station; but when they began to stand to the southward, or how their line was broke, I know nothing about, for I was otherwise employed.

Q. At what time was it when your Lordship did observe they lay with their heads to the southward?

A. It was sometime before, but the time I observed particularly, was at twenty-five minutes past two, when I hauled my wind, and set my sail upon the larboard tack, in obedience to the Admiral's signal to wear.

Q. Does your Lordship happen to remember taking notice, when the last of our ships came out of action?

A. I do not; the last firing I saw was about four; but I don't take upon me to say, that was the last of the French firing; the last I observed, was about that time; I believe it may not be worth while to take it all down—My answer is, I do not.

Q. From the brisk firing that was kept up during the engagement, upon the part of our ships, does your Lordship believe, that the French did not suffer in proportion to the English, upon the whole?

A. I desire not to answer to any questions of opinion or conjecture.

Q. Did your Lordship see any of the ships of our fleet dismasted?

A. I did not; by dismasted, I suppose, is meant lower masts.

Q. Or top-masts?

A. I saw the Foudroyant's mizen-top mast gone, but I did not see any lower masts gone.

Q. Your Lordship has stated, that at twenty-five minutes past two, the French fleet were standing to the southward of the British fleet?

A. I did not say I saw the French fleet, but some of the French ships.

Q. Some of the French ships standing towards the British fleet?

A. I did not say the British fleet?

Q. As they were standing to the southward, was that towards the British fleet?

A. They were standing towards some of the disabled ships; when I had hauled my wind, I about that time looked up for them; I had been to leeward of all the disabled ships.

The Admiral. I am not sure whether his Lordship mentioned the time.

A. I said twenty-five minutes past two; but in all dates, I desire to be understood to speak from the watch, by which the minutes were taken, which was fifteen minutes slower than mine; and to ascertain the time I stated, what time the red flag was hoisted by that watch.

Prosecutor. Q. Did your Lordship mention what ships those disabled ships were, that you observed the French was pointing towards?

A. I can; the Egmont, Ramilies, Robuste, and Sandwich; I think I could not be mistaken in my eye of those four ships, and, I think, they were those ships, as far as I could venture to answer: the Ramilies was the leewardmost one, because I passed close to her, and hailed her; I know that ship.

Q. By your Lordship's account, the Admiral, and the Vice Admiral of the Red, were standing on their larboard tacks?

A. I did not mention the Vice of the Red; for I had not attended to him; the Admiral was standing upon the larboard tack.

Q. Be-

Q. Before that the Vice of the Red tacked?

A. The Vice of the Red had tacked before, but I stated, I took no further notice of the Vice of the Red till the evening, I don't mean to say it was not so, but I did not observe it—I would shorten the answer, if the Vice Admiral of the Red was left out of the question, because I know nothing about the Vice Admiral of the Red.

Q. While the French fleet, or part of them, which your Lordship remembers were standing to the southward, and the British fleet to the northward, were they standing towards each other, or wide of each other, or how?

A. The English fleet were to windward of the other, and I was working up to windward, to get into my station, and I just looked up for the headmost French ships: the French ships appeared to me to be standing for the disabled ships, the four disabled ships I have mentioned; I am the more confident in this, because at a little after three, about five minutes after three, I see by the note I took of the ships being still there, I was uneasy for those ships; and observed, if the signal for the line had not been out, I should have thought it my duty to join them: I only state this to the Court as descriptive of the situation at that moment.

Q. From the situation your Lordship has described the two fleets to be in, that the British fleet wore, and stood the contrary way, or the French wore, and stood the contrary way first?

A. I could wish to answer those questions with respect to the different tacks they were upon, and not any expressions that might involve an opinion; the French ships that I mentioned I just looked up for at that time, were standing upon the starboard tack, the Admiral was at that time upon the larboard tack; and at ten minutes past three, the Admiral made the signal to wear, and laid his head upon the starboard tack: please to correct the question, and mention tacks instead of situation. I wish, in answering questions in a hurry, not to be found afterwards, that I have given an opinion I did not mean to give.

Q. Did both fleets continue upon that tack the rest of the afternoon?

A. The Admiral with the ships with him did; and the French also, as far as I saw; the particular ships to get into their stations did not, but the Admiral did with the body of the fleet. The question goes to that, I understand.

Q. Did your Lordship observe the French fleet begin to form a line about the time you have described, that they were a little under our lee when you was upon the starboard tack?

A. From the time that the Admiral wore, my attention was solely engaged to work my own in ship such a way, as to get the most expeditiously into my station a-head of the Admiral, till I was in my station I made no farther remarks upon the enemy.

Q. Did your Lordship take notice of the Red Division coming down into the Admiral's wake that afternoon?

A. I did not.

Q. After your Lordship did get into your station, what observations do you recollect to have made, relative to the French fleet then?

A. In the circumstances I am going to mention, I cannot pretend to fix accurate periods of time, because, as they were progressive motions, they only struck me in the gross. I had tack'd in my station with the Admiral's masts in one, about half after five, and three-quarters after five, I think, part of the French fleet were then forming a line to leeward; another part appeared to me; the greatest part of them appeared to me to be nearly a-stern of the ships, formed in the Admiral's line, and they appeared to me to be forming their line one by one to leeward of that body; the Admiral's line was close, I think, a cable's length a sunder, not the French line, they appeared, as well as my judgment

at that distance of time was, to be three cable's length, and about half a mile distance; I think they were within three cable's length, not further distant than half a mile, that is part of the time in the evening; and part of them after the van had got a-head of me and the Admiral's division, so far as I could see, in a line a head, were formed; the second ship of the French line was very nearly upon my beam, for I could see their quarter gallery, but no part of the stern, and the whole broad side; I believe she was rather abaft my beam; the distance between the two lines, I think, was somewhere between two and three miles, to the best of my recollection; about half after five, I got into my station.

Read the question again. To what period does it allude?

Q. When you spoke of wearing, your Lordship got into your station after, I understand your Lordship did not take any particular notice?

A. I did not—I am now describing after I got into my station, from that time till dusk in the evening, of what I understand to be the situation; I cannot fix the period to any part of it, because it was a thing that was passing by my eye, and there was no determined point to make any minute of.

Q. I will go a little way back, at the time your Lordship was upon the larboard tack, and you observed some of the French ships towards the disabled ships, did your Lordship happen to notice any of the French ships firing upon one of our ships that was left a-stern then, or any part of the afternoon?

A. I believe I did not say, that I took notice of them when I was upon the larboard tack, they must have been standing that way before I hauled my wind, for I was going before the wind at the time I hauled my wind. Does it say the larboard tack?

Judge Advocate. Yes.

Lord Mulgrave. I beg pardon, I was upon the larboard tack.

The question again read.

A. I did not see any firing then.

Q. Did your Lordship observe what sail the Victory carried during that afternoon, when she was standing to the southward.

A. I did not, for I was only attentive to keep my own distance, and did not make any particular observation upon the sail carried.

Q. In the night of the 27th, Sir, was it observed on board your ship, that any signals were made in the French fleet?

A. Not so accurately as to make a note of it as signals, but we thought we saw some rockets between ten and eleven; it was a matter of conversation and opinion, but not with that precision, that I should have thought myself authorized to have minuted it down as a signal I observed; I thought so myself, at the time, they were signals; I believe between ten and eleven o'clock, or about eleven; I would wish not to be understood to speak to a precise time.

Q. Was it observed on board the Courageux?

A. No.

Q. Was any signal made in the night by the Admiral for altering the course?

A. I saw none.

Q. What part of the French fleet were in sight the next morning?

A. I saw three strange ships, and I saw a signal made for a fleet by two of our own ships, I think the Monarque and the Queen.

Q. Did you take those three strange ships to be French ships of war?

A. I suppose so, I saw no colours.

Q. Did you judge them to be line of battle ships?

A. I formed no judgment about them.

Q. What distance might they be from the British fleet?

A. I don't at all know.

F f

A. Which

Q. Which way did they stand?

A. I don't remember, I did not observe particularly, the ship I commanded, was not in a condition likely to have her signal thrown out to chace, and therefore I did not attend to them.

Q. Does your Lordship remember how the wind was that morning?

A. The wind was about west, I believe; I did not take any particular notice, but I think it was marked west in the log-book, it was westerly, I believe west.

Q. What kind of weather does your Lordship remember it was?

A. Moderate weather, and rather hazy, there was a swell.

Q. Can your Lordship speak to the latitude by the reckoning that day.

A. I have an extract of my bearings and distances, does the question relate to the 27th or 28th at noon?

Q. The 28th at noon?

A. The 28th at noon, the latitude 48, 16, and Ushant bore N. 79 E. distance seventy-four miles, by my reckoning that I went by in the ship.

Q. If your Lordship sees any impropriety in answering the next question, I will not put it. I will mention the question first; I would ask Lord Mulgrave, whether he considers Ushant as a dangerous lee shore, with the wind at west, moderate weather, and summer time?

A. It is a question, I believe, entirely upon pilotage. It depends more upon the chart, and the knowledge of the Coast, than me. I understand I am to give evidence to what I know, and not to obtrude my opinion upon the coast, to a matter they are fully competent to judge of, it does not arise from any circumstance respecting my being there.

Cross Examination.

Admiral Montague. My Lord, to your Lordship's knowledge or observation, did Admiral Keppel negligently perform the duty imposed upon him upon the 27th and 28th of July?

A. I have taken an oath to answer the truth to all questions; I look upon opinions to be matters liable to error; I have answered every fact as distinctly as I could, that has come within my knowledge; I hope the Court will not press upon me to give my opinion; I have always thought opinions and thoughts of individuals were sacred; I have declined to my most intimate friends giving any opinion upon this case. The Court, who are to form their opinions upon the evidence, have taken an oath not to divulge each others opinions; and, I hope, the justice, candour, and reason of the Court, will extend that protection to me, which the law has given to them, and that I shall not be called upon to give any opinion: the Court are to judge of the facts before them; and I should think myself in a most disagreeable situation, as a witness, if I am called upon to answer upon oath, to that which is matter of opinion; and, perhaps, after giving my opinion to-day, at another time I might find I had not spoke to matter of fact. As to speaking to opinion I cannot; I might alter that opinion at another time, as I might not think so.

Admiral Montague. I fancy your Lordship totally misunderstands my question; I have not asked your opinion; I will not ask the opinion of you, or any evidence that appears to this Court. I do expect every evidence will answer to such questions as shall be asked; he has taken an oath, which is, that he swears the truth, the whole truth, and nothing but the truth, So help him God; the question, I ask, is from your Lordship's own knowledge and observation of the transactions of those two days. Did Admiral Keppel negligently perform the duty imposed upon him?

A. I perfectly understand the question; if I understand the language, it imports me much, when I

am upon my oath, to go by own understanding, and not that of other people. The term negligence implies a crime; I must be equal to the duty of the Admiral commanding in chief, before I can decide, whether he did his duty properly or no, upon oath—it is for this Court to decide that, not me; I am to answer to facts; and if I am to be urged more by the Court, it is not the Admiral that is accused, but me they are trying; because I am to form a judgment how that fleet was conducted, who am not the man that commanded it. I think it is not my duty to give that answer; if I am pressed by one member, I must desire the sense of the Court to have their opinion, and considering the oath they have taken, and I have taken, and to turn it in their minds, whether the opinion of individuals ought to influence their judgment in a trial of this importance. If, necessary, the Court should withdraw upon that, I hope the Court will solemnly and deliberately take it into consideration, before they call upon me to say, whether by any act of the Admiral, he was guilty of neglect or not; a transaction on one day, may be thought criminal, which in another would not. I am asked to give my opinion, whether the acts done by the Admiral, that day, were criminal or improper; I am asked to every motion of the fleet; as I have observed, I have answered every thing that has been required of me, as matters of fact, and, I say, I am ready to answer every question respecting facts, but to draw an inference from those facts, does not belong to me. I speak freely, because, in my situation, it becomes me so to do. If I am compelled to answer to matter of opinion, I shall think myself injured. I think myself an injured man, if I am to answer it; and if that question is to be pressed, I wish the Court to consider by themselves a few moments, whether it is proper or no, as my mind is very much agitated by having such questions put to me. I would add a very few words to what I have already said to the Court, who are the judges, and do it now under the sense and impression of the oath I have taken. It has happened to me, during the course of time I have had the honour of serving under that Admiral, to disapprove, in my own mind, of particular steps taken at one time, and upon farther consideration, to approve them, when I have felt myself wrong. After that, will the Court, at this moment, call upon me to give an opinion, which, perhaps, I may alter hereafter.

Admiral Montague. You are, and appear here as an evidence, to answer all such questions as shall be demanded of you; and, I believe, in no Court of Justice in Great Britain, would any witness be suffered to make use of such language as you have here made use of to a judge. What has fallen from his Lordship, appears greatly like a censure upon this court; and it will appear, without doors, in a very strange light.

Lord Mulgrave. I must insist upon stopping this. If I am to have a question put to me, I have a right to answer it; if I am to have a reprimand, it must be from the Court, and the whole Court.

Admiral Montague. You are to appear here, and to answer all such questions as are asked of you; and in no court of justice in Great-Britain, would an evidence make use of such language as you have made use of.

Lord Mulgrave. I am sorry to be treated with warmth; I don't know that I deserve it: if I do, I am ready to submit to the correction of the Court; but I speak according to my own feelings. When I objected to the question, I thought I was not bound to answer it. I hope, when I am corrected, it will not be by a single member of the Court—not an individual—that is not the rule, I believe: if I am to have correction from the Court, it must come from the body, and not an individual member.

Admiral Arbuthnot. I differ exceedingly from

his Lordship; every member of this Court has a right to ask questions of a witness; but if that is always to be objected to, there will be no end to the proceedings.

Admiral Montague. Has his Lordship a right to dispute the power of the Court to ask questions?

Lord Mulgrave. I beg leave to say, I did not seem to contradict the right of the Court, but that a single member of it has a right of passing censure upon me.

Admiral Montague. What has passed from your Lordship, has appeared greatly like censure to this Court. I have been forty years in the service, thirty of which I have had the honour of being a captain, and years an Admiral; I have sat at many courts martial, and have never heard an evidence make use of the language to the Court, that has been made use of here, and which, I hope, will have no interest with it.

Lord Mulgrave. I did not mean to shew any disrespect to the Court; I was too much taken up with regard to my own feelings; I thought it my duty to state to the Court my objection to that question, and call upon the Court in the most solemn manner I could, to consider before they put that question to me, which I did not think myself bound to answer: it was respect to the Court, not disrespect, that made me wish they would consider it. I hope no improper construction may be put upon my words; I am perfectly cool myself, though I am agitated; I am not conscious I have erred. I submit myself to the Court, to their candour and consideration.

Admiral Montague. I beg leave to withdraw.

The Court withdrew.

When they returned, the President acquainted his Lordship, the Court had come to a resolution respecting his Lordship's answer to the Court, and then desired the Judge Advocate to read it.

Judge Advocate. This is the report of the President of the resolution of the Court.

I am directed by the Court to observe to your Lordship, that in the course of the reasons you have thought fit to use in declining to answer the question put to you by one of the members of this Court, with the approbation of the Court; you have made use of improper language, and that too with a warmth unbecoming of this Court to receive. Your treatment of them is such, as they cannot pass over without observing to your Lordship their sense of the impropriety (and it is their pleasure, I acquaint your Lordship with their disapprobation) of your Lordship's behaviour to them.

It is agreed by the Court, that the question which has been put to your Lordship, should be repeated; but I am directed by the Court, to signify to your Lordship, that as your Lordship has said, by the oath you have taken, you conceive it to be a matter of opinion, you are at liberty to answer it or not.

Lord Mulgrave. It is my duty certainly to submit with the greatest respect to the determination of the Court; I can only say, I had no intention to give offence; I meant to state my reasons for such refusal, with great respect to the Court; it has appeared otherwise to the Court; and I am concerned they should misrepresent what I have said to them.

Mr. President. You will not give an answer to the question?

A. I can give no answer to that question.

Court adjourned to the next day.

The Nineteenth Day's Proceedings, July 28, 1779.

The Court asked the Admiral if he had any question to ask Lord Mulgrave?

The Admiral. I don't mean to trouble his Lordship.

Adm. Montagu. I beg his lordship will apprise us of the defects of the *Courageux* in her masts and sails after the action?

A. The main mast very much wounded, several

of the main and fore shrouds shot away, both the main stays, the main and preventer stays, a double-headed shot in the foremast, the main top mast wounded, mizen top mast very much wounded, the main yard wounded, the main top sail above a third of the reef cut to pieces, so I was forced to close reef it and the top mast pretty near the sail, a great many shot through the main sail, and five shot at and under the water mark by the carpenter's account to me, the running rigging very much cut, one of the main geer and the main top chain were shot away.

Court. Your Lordship may withdraw.

Prosecutor. I shall now call for Lord Sandwich to exhibit and prove such letters as his Lordship may have received from Admiral Keppel, in relation to the engagement of the 27th of July; but I think it proper to inform the Court, that this is a species of evidence for which I should not have called, if Admiral Keppel had not set the example, by calling for my letters to that noble Lord.

When his Lordship is before the Court, to save trouble, I suppose Admiral Keppel will have no objection, I shall also ask for such of my own letters to his Lordship as have any relation to the engagement.

The Admiral. Mr. President, so far from having any objection to what is proposed by the Vice Admiral, there is not one act in my life I don't wish may not come before you, Sir, whether it is private or public.

Prosecutor.* I am aware my letters to Lord Sandwich are not evidence against Admiral Keppel, nor do I recollect they contain any thing to his prejudice, but the Admiral having called for them, it is to save the trouble of calling his Lordship a second time, that I propose to have them produced; still I must be understood as not desiring to have them read unless the Admiral desires it.

The Admiral.† Mr. President, If I should find it necessary to call on the Earl of Sandwich to produce the Vice Admiral of the Blue's correspondence with his Lordship or with the Admiralty, relative to the transactions of the British fleet upon the 27th and 28th of July, I will give his Lordship due notice for that purpose. In the mean time I must object to their being exhibited at the call of my accuser; he has a right to produce my own letters as evidence against me, but it belongs to me alone, and not him, to make evidence of his.

The Court withdrew upon the objection, and came to the following resolution. That this Court cannot take cognizance in point of evidence of any matter or letters of private correspondence.

Prosecutor. I must submit to the decree of the Court.

The Earl of Sandwich being called in, the Prosecutor spoke to the Court as follows:

Mr. President, I now call upon Lord Sandwich to exhibit and prove such letters as his Lordship may have received from Admiral Keppel, in relation to the engagement of the 27th of July last; but I think it proper to inform the Court, that this is a species of evidence for which I should not have called, if Mr. Keppel had not set the example, by calling for my letters to that noble Lord; his Lordship being now before the Court, I shall also ask for such of my own letters to his Lordship as relate to the engagement.—Then the Prosecutor read what he had stated before Lord Sandwich came into court, as above.* The Admiral likewise read his answer, as above.†

The Court then desired the Judge Advocate to read the resolution of the Court again, which was read.

Judge Advocate. There is a matter that passed in conversation, sometime before Lord Sandwich came into court, which had occasioned you to withdraw into another room, and during the time of your absence, the Court came to this resolution:

That

That this Court cannot take cognizance in point of evidence of any matters or letters of private correspondence.

Prosecutor. I must submit to the decree of the Court.

Court. Has your Lordship any thing of a public nature to produce?

The Earl of Sandwich then made the following speech to the Court.

Mr. President, I only beg to mention it certainly does appear to me, as I perceive it appears to the Court, that private letters are a very unusual kind of evidence to be given—I have brought the private letters with me—If it is the opinion of this Court, that no private letters are to be brought as evidence, I flatter myself, the Court has no farther occasion for my attendance. I know of nothing farther upon either side of the question but private letters, and these are in those private letters.

At the close of this day's proceeding, Lord Sandwich not being present, the Admiral said, * I beg leave to say a word in answer to what dropped from the Vice Admiral while the Earl of Sandwich was in Court. Sir Hugh Palliser has said, that I had set an example of calling for private correspondence. I have not as yet opened my defence, or called for any evidence, and of course, can have set no example. I have not summoned the Earl of Sandwich—my reason for giving notice to his Lordship, that perhaps I might call upon him to produce Sir Hugh Palliser's letters, was solely with a view to prove (what from those I had myself received I imagined to be the case) that the tenor of his correspondence at that time was very inconsistent with the accusation he has since thought proper to prefer against me.

This point my accuser has admitted, by saying, that he does not recollect that his letters contain any thing to my prejudice. As to any secrets of his correspondence with the Earl of Sandwich, I neither fear nor desire them to be made public; and I acquiesce, with perfect indifference, in the decision of the Court in respect to the production of them.

Edward Michael, Lord LONGFORD, sworn.

Court. Has your Lordship heard the charge read?

A. I did not hear it read.

The charge was ordered to be read to his Lordship.

Prosecutor. I would desire to know of Lord Longford, if he recollects the time when first he saw the French fleet on the morning of the 27th of July?

A. I did not see the French fleet that morning till the signal was made to chase. I was not upon deck at day light, so I do not know at what time they were perceived.

Q. Does your Lordship recollect upon what tack they were when you did first perceive them?

A. They were upon the larboard tack, I think the same tack that we were.

Q. Does your Lordship remember whether they changed their tack, whether they tacked or wore.

A. I cannot be certain, but I rather believe they wore, I saw some of them wear, I don't know whether they did not all wear.

Q. Did they appear to your Lordship to be in a line?

A. They did at that time.

Q. Did your Lordship observe when they changed their tack again?

A. I did, Sir, observe them, it was a little I think before the firing began, some upon one tack and some upon the other.

Q. Did your Lordship observe they wore that time upon changing their tack?

A. I did not observe particularly, some of them I know wore.

Q. Did they appear to your Lordship as they came upon the larboard tack to form their line again upon that tack.

A. They did, Sir; it appeared to me that they did.

Q. What part of the French line did your Lordship fall in with and begin to engage?

A. We were fired upon I think by the third ship of the enemies van, and we returned our fire to the fifth or six ship, the others were at too great a distance I thought.

Q. At that time was any of our ships so near the America as to be of aid and support to each other.

A. The Terrible was very near the America, a little upon her weather bow, and the Elizabeth was very near, a little upon the lee quarter; we were all three very near one another.

Q. Did they continue so throughout the engagement?

A. We did for a considerable time.

Q. The America was one of the Vice Admiral of the Blue's division?

A. She was, Sir.

Q. Does your Lordship remember a signal for six ships of that division to chase that morning?

A. I do, Sir.

Q. Can you name the ships?

A. Mine was one of them, I cannot name the rest.

Q. If the ships of that division had been permitted to remain together, might not the whole division have gone into action together with their own flag, and engaged as their own flag did if they had not been separated by signal?

President. My Lord, it is my duty to tell you, any thing you look upon as matter of opinion, you may or not answer as you think proper.

Lord Longford. Read the question again to me.

[The question read.]

A. If the wind had continued as it was when that signal was made to chase, and that the signal had not been made, I do not believe that any part of the Vice Admiral of the Blue's division could have come into action at all.

Q. Under those circumstances your Lordship has mentioned in that case, would the center division have been able to come into action at all any more than the Vice Admiral of the Blue's?

A. I do not know but the center could certainly have come into action sooner, because they were to windward of the Vice Admiral of the Blue.

Q. As his Lordship has answered questions that are somewhat matter of opinion, I will beg leave to ask his Lordship, whether, if the signal had been made for the whole of that division to chase (the Blue division) instead of a part, would it not have had the same consequences to the whole as for that part whatever the consequence might be?

A. If they had been altogether I believe it would, Sir.

Q. Your Lordship mentioned the signal was for six sail?

A. I cannot be positive as to the number, there was several, and my ship among the rest; I cannot be positive what it was for.

Q. Does your Lordship remember how much the wind shifted that day?

A. I do not indeed, Sir, exactly.

Q. How was the America situated with respect to the Victory at the latter part of the engagement?

A. Very soon after I had passed the sternmost of the French ships I passed a head of the Victory, she was then upon the larboard tack, standing towards the enemy.

Q. I believe your Lordship has not understood my question?

Q. Before you was out of action?

A. I cannot tell—I was in action—I did not see her—I could not distinguish which was the Victory at the time.

Q. Was the signal for battle flying at that time?

A.

* This was spoke by the Admiral at the close of the proceedings of this day, but is placed as above, to make it better understood.

A. I do not recollect.

Q. Was you a head of the Vice Admiral of the Blue when you came out of action?

A. I was, Sir.

Q. At the time your Lordship is speaking of, when you passed a head of the Victory, did you take notice of the Red division?

A. I did, Sir; a very short time before I passed the Victory I passed under the lee quarter of the Queen, who was then upon the larboard tack, also standing towards the enemy.

Q. Did your Lordship take notice of the Vice Admiral of the Blue when he came out of action?

A. I did not particularly just at that time.

Q. Does your Lordship remember what time you did happen to take notice of him?

A. I do not particularly.

Q. Did your Lordship observe the French fleet when they began to lay their heads to the southward?

A. I believe I saw them soon after they began—I don't know whether I saw them rightly; when they first began to lay their heads to the southward my head was to the southward too—I was upon the quarter deck and did not see them at first.

Q. Was it before or after the Admiral wore and laid his head to the southward that you can recollect or that you took notice of?

A. I cannot recollect.

Q. I think your Lordship has said you passed a head of the Victory and to leeward of the Queen?

A. I did.

Q. And by that description the red division were to leeward of the Victory?

A. They were.

Capt. Duncan. Q. The whole of the division, my Lord?

A. I don't know whether the whole of the division, but such as I saw stood after Sir Robert Harland; at that time; I did not reckon them.

Q. Were they to windward of the rear of the enemy at that time?

A. I am not certain; I believe they might have weathered the rear of the enemy at that time.

Q. Did your Lordship observe when the Admiral wore and lay his head to the Southward?

A. I did not, Sir.

Q. At the time his Lordship has taken notice of some of the French ships laying their heads to the southward, which way was the French then standing to the best of your recollection.

A. I answered that question before. I do not recollect I observed which way the Admiral's head was, when I saw some of the French ships, with their heads to the southward.

Q. After that time did the French continue to stand with their heads to the southward; the whole fleet?

A. They appeared to me from that time to begin to form their line; they led out one ship after another from the body of their fleet as it appeared to me very slowly.

Q. Did they continue to do so all that afternoon, my Lord?

A. They appeared to me to do so all the afternoon.

Q. Did the British fleet stand to the southward all that afternoon?

A. The British fleet formed their line with their heads to the southward, and continued to stand on that tack all the afternoon.

Q. From the very brisk fire that was kept up by our ships that engaged, has your Lordship reason to believe that the French must have suffered in proportion with the British fleet in some shape or other?

A. They did not seem to have suffered so much as several of the British fleet appeared to have suf-

ferred in their sails and rigging, but I hope they suffered more in their men.

Q. From the motion of the enemy during that afternoon standing to the southward and forming a new line of battle, did that shew a disposition to renew the engagement or to avoid it?

A. If they had been inclined to have renewed the engagement, I apprehend they might have fetched up within pistol shot of the British fleet; there was nothing that I could see to prevent them—they shewed a disposition to fight if they were attacked, but I don't apprehend they meant to renew the engagement.

Q. Did your Lordship observe that any of those ships, as they advanced under the lee of the British fleet, fired on one of the ships that was left a-stern?

A. I did not see them.

Q. How many of the French fleet were in sight the next morning?

A. Three sail I think.

Q. Did those ships appear to your Lordship to be line of battle ships?

A. I was so far from them that I could not distinguish whether they were line of battle ships or frigates.

Q. Was they chased by the British fleet?

A. I do not know.

Cross examination.

The Admiral. Q. I would ask Lord Longford if he recollects when he made sail in the morning by signal at five or what sail the Vice Admiral of the Blue was under?

A. I do not know what sail the Vice Admiral was under, I was under my double-reefed top-sail and fore-sail.

Q. When the signal was made for the different ships of the Vice Admiral of the Blue's division successively, had it not an effect upon the others, when the Vice Admiral himself set all his sail to follow the chasing ships?

A. I don't very well understand that question.

Q. Did the Vice Admiral of the Blue division set all his sail upon some of his division being ordered to chase?

A. I did not observe.

Q. Your Lordship has heard all the articles of the charge read?

A. I have.

Q. Therefore I must desire you will state to the Court any instance, if you saw or know of any such, in which I negligently performed any part of my duty on the 27th or 28th of July?

A. I can state no such instance to the Court for I know of none.

ROBERT CHRISTIAN, Master of the Ramilies, sworn.

Prosecutor. Please to give an account of the bearings and distances of Ushant on the 28th of July?

A. Lat. 48. 20. bearing N. 86 degrees; E. distance 52 leagues.

Court. How came it two leaves were torn out of the log-book on the 26th and 27th?

A. They never were to my knowledge.

Adm. Montagu. Between the 26th and 27th.

A. Not to my knowledge, Sir.

Q. You know you are upon your oath?

A. This part was sewn into the book afterwards—this was never cut out by me—this was an additional part sewed into the book, and this part (meaning the center, where you might see plainly the edges of two leaves that had been cut out) was full

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full of dirt, and there never was nothing wrote upon it in the world.

Court. Was it cut out to your knowledge?

A. Never to my knowledge. In this part there is an addition put into the book.

Q. Did you end at the 26th?

A. It was not torn out to my knowledge, but I suppose it was torn out by some of the young gentlemen, but the two leaves never had any thing wrote upon them.

Adm. Montague. It would have had a better appearance if they had not been cut out—It is at a critical time and does not look well.

Adm. Roddam. Can leaves be cut out of the log-book and the master not know it afterwards?

Adm. Arbuthnot. The man has swore they were not wrote upon.

Prosecutor. Ask the Master if he considers Ushant as a dangerous lee shore with the wind at west and moderate weather?

The Admiral. First, if you please, I desire to know whether he has said the wind was at west—he has said nothing about it?

Court. How was the wind upon the 28th of July in the morning?

A. On the western hank I think.

Prosecutor. Q. What sort of weather was it at that time in the morning of the 28th?

A. Moderate weather.

Q. If he considers Ushant as a dangerous lee shore with the wind westerly and moderate weather?

A. No.

President. Would you have ventured upon that shore with crippled ships?

A. Not too near in.

Q. Ask the master if he has been used to cruize off Brest and off Ushant?

A. In the late war I was.

Q. Does he apprehend any eminent danger in chasing ships in the middle of Summer, even within Ushant and off Brest harbour?

A. No.

Q. I would ask the Master if he can inform the Court how much the wind shifted?

Q. Ask the Master how much the wind shifted in the morning of the 27th from six o'clock to ten?

A. I cannot.

Court. Could you recollect it if you had your log-book before you?

A. Sir it is set down in the log-book.

Adm. Montagu. Have you not your own private log-book with you?

A. I have it not with me.

Prosecutor. Would the Court please to have it noted from the log-book what shift the wind was on;

The Admiral. I beg nothing may be noted from the log that has leaves taken from it.

Prosecutor. A great deal has been noted from the Formidable's log-book by the approbation of the Court.

The Admiral. That log-book was in evidence because it was under the inspection of the accuser, and for no other reason in the world; if the Court admit it; they are best judges; but if they do, they will be pleased to put down, in the morning of the 28th the wind at west north west.

Prosecutor. The point I wish to establish from the evidence of the masters with the log-books, is the shift of wind between six in the morning and ten upon the 27th. From that log it appears only one point.

Capt. Cranston. Two or three points several witnesses said.

Adm. Arbuthnot. Several said two points; some two, some three; half a dozen have said so.

Prosecutor. I desire to ask him how the wind ap-

peared by the log-book of the Ramilies? There is a regular course by which the ships reckoning is kept, the wind and her course.

A. It appears it shifted from south west to west.

Adm. Montagu. I shall put the question, whether you will admit any part of this to be evidence or not; if we disagree we must withdraw.

Prosecutor. There is a very long part of the occurrences, but does not relate to the wind and the courses.

The Admiral. I think it is so trifling a matter about the wind, it is of very little importance to me, so that I have no sort of objection to it, to save your time.

Adm. Montagu. We have an opportunity of seeing the log-books here, and if they should happen to differ, those which have not leaves torn out from those which have, when we come to judge it is for us to consider of this or that part of the log-book or not, and whether the wind shifted or not, and of every thing that becomes the part of an honest man to do.

Court to the Admiral. Have you any questions to ask the witness.

The Admiral. Sir, as I shall not condescend to measure my conduct, who am the commander in chief of a fleet, by the opinion of a master of a ship, I shall put no questions to the witness.

RICHARD STOREY, Master of the Shrewsbury,
Sworn.

The Court ordered him to produce his log-book, which he did; and the oath was tended that it was the true; original, &c.

Prosecutor. Ask the Master of the Shrewsbury if he remembers the Shrewsbury wearing and standing towards the enemy before any other ship of the red division?

A. Yes, Sir, we did.

Q. Do you remember the occasion and for what purpose it was declared to be at that time and by whom?

A. I really don't know.

The Prosecutor was going to state questions from the log-book.

The Admiral. I am in the judgment of the Court whether he is to state questions out of the log-book?

Prosecutor. I shall state no questions but what relates to the wind.

Court. He may refer to his own log-book.

Prosecutor. By all means.

Q. Do you remember about that time, taking notice of the situation of the ships that remained engaged, the Vice of the Blue's?

A. I did not, none but the Formidable.

Q. What notice and observations were made, relative to her situation, on board your own ship?

Court. The man is to speak to his own knowledge, not what other people spoke of or saw.

Q. What observation did you make relative to her situation at that time?

A. Nothing more than seeing her engaged; I could see nothing more than the flag and just the upper part of her top sails.

Prosecutor. I understand I am not permitted to ask what conversation passed between the officers and myself relative to what passed?

Adm. Montagu. We have refused that when Lord Sandwich was here, with respect to any private conversation or letters, carried on between the Vice Admiral and the Commander in Chief, or the Vice Admiral and Lord Sandwich, and we cannot admit it. Hearsay evidence, in my opinion, will have no weight with me at all, no more would private correspondence by letter.

Q. Did he take notice of the Formidable after she came out of action?

A. No

A. No farther than seeing her sails much shattered and shot.

Q. After the red division had tacked, did you observe what sail the Victory was under while she was on the contrary tack?

A. I did not.

Q. How much did the wind shift from six in the morning of the 27th to ten? Please to inspect your log-book and tell us.

The Court desired to know when he made that entry in the book;

The witness said about four o'clock in the afternoon when the action was over.

Q. When it was entered in the book was it took from the log-board?

A. It was taken from the board.

Adm. Montagu. Do you remember from your own knowledge, between six and ten, how many points the wind shifted?

A. I don't suppose it shifted above two points and a half, or three points at most.

Adm. Montagu. You never could have looked up at the enemies fleet if the wind had not shifted?

Judge Advocate. Upon looking into his log-book, he desires to inform the Court, that it appears by that, that it shifted two points within the time.

Prosecutor. There are two or three days works in the log-book crossed out and entered anew?

A. Yes.

Q. What is the reason of it?

A. The reason of it was, the book was ruled and the hours marked upon it; there was not room in the page for the 27th already ruled to insert every transaction; this was ruled again for the 28th; I crossed out that part, and here is the account of the 27th on the following page, and that stands; it is all very fair; I wrote it myself in the afternoon, and every one of the ship's officers was by me almost: the Captain, the Lieutenant, the second then, the first now; was by me; and almost every other officer.

Prosecutor. The Master said, I think it appeared in the log-book the wind shifted two points at six; at six S. W. and by W. at seven S. W. it remained so till eleven; at twelve S. W. and by S. with the ship the reverse way?

A. I cannot say whether it might be marked or not against it, upon account we was bearing for Ushant.

President. Do you remember whether the ships would have been able to come to action that day if the wind had not shifted?

A. We certainly could not.

The Admiral. Every body knows we could not.

Prosecutor. Q. Does the Master remember seeing the French fleet that morning tack or wear once or twice before the action began?

A. I do.

Q. Did they wear twice?

A. They either wore or tacked twice.

Q. I should be glad to know if the Master can say whether they tacked or wore?

A. The last time they wore, but the first I am not certain.

Q. If the French fleet wore twice, would not that bring them upon their bearings to the British fleet nearer than they would have been if they had not so worn?

A. Most certainly.

Cross Examination.

Adm. Arbuthnot. Do you say they wore twice?

A. I am not certain whether they wore first or tacked first; it is in my log-book, but cannot remember it.

Q. Then if there had been no shift of wind would not that have occasioned the English fleet to lay more up with them when they tacked than if they had not worn?

A. It certainly would, Sir.

Q. At the time you mentioned they did upon your knowledge wear, had not they run a good deal to windward before they hauled their wind upon the contrary tack?

A. I cannot tell what distance they might run to leeward; it was very thick for some time; I could not see one; when it cleared away I counted six sail before the wind as I stood upon deck with my glafs in my hand.

Court. Do you recollect what observation was made in your log-book at that period of time?

A. To the best of my remembrance I mentioned in the log-book, I thought they were bearing away for Brest.

Q. By those ships having gone before the wind, as you describe, was not that the cause why the British fleet laid so well up with them when they tacked?

A. Certainly.

Q. Do you remember how the wind was in the morning of the 28th?

A. West.

Q. What sort of weather?

A. Something hazy.

Q. As to wind, was it moderate, or fresh, or hard, or how?

A. The ship might have carried whole top sails upon a wind.

Q. Do you consider Ushant as a dangerous lee shore in the middle of Summer, moderate weather, the wind at west?

A. Not in a single ship; as for a fleet it is more dangerous certainly.

Q. Is Ushant, with that wind, a lee shore at all, and a dangerous course, with the wind at west, for any ship or any number of ships?

A. It might be made a lee shore by running too far to the southward.

Q. I am stating the question, supposing yourself in the latitude of it or nearly in the latitude of it?

A. It certainly cannot be a lee shore without a person makes it so himself by running upon it.

The Admiral. The Prosecutor avoided asking this gentleman his day's works of the 28th. I shall beg he may give his day's works; perhaps he knows it.

Court. Have you got it?

A. I have it not with me, but it is down in the log-book.

The 28th I have not here.

The witness looks at the log-book.

Court. What distance was you on the 27th?

A. Ushant south 84. east 19 leagues at eight o'clock in the morning.

Q. Is that your own working?

A. Yes.

Adm. Arbuthnot. Not taken after you made the land, a corrected reckoning?

A. No, Sir, I never do that.

The Admiral. When we got upon the starboard tack after the enemy, was not the Shresbury upon the weather bow of the Admiral of the fleet?

A. About half an hour after we tacked I believe.

Q. Did you look at the Admiral just before you came to action?

A. I did not.

Q. I have but one question to ask relative to what happened. Do you recollect about four days before the English and French fleet came together a very strong wind at north and by west that obliged the fleet to stand to the southward and crippled many of them, the Victory particularly?

A. I recollect it blew very fresh, and, to the best of my remembrance, I think the Victory's main yard was gone.

The Master of the Victory, JOHN MADGSON, sworn.

The Master. I beg to mention something to the Court.

Judge Advocate. You have been sworn to the book you delivered in?

A. Yes.

The Master. Upon hauling over my remarks of that day, I find there was omitted the bearings of three o'clock in the afternoon, which I afterwards inserted opposite the other, but had forgot, when I was here upon oath the other day, to mention it when I put it in.

Q. Where did you take it from when you put it in?

A. Upon recollection, I put it opposite to the hour of three in the variation.

Adm. Montagu. Was it by the desire of any body that you interlined that, or made that alteration?

A. No, Sir.

Q. Upon the oath that you have taken?

A. No, Sir.

Capt. Duncan. The courses of both days are inserted?

A. Yes, Sir.

Prosecutor. What time was it the Master mentioned there had been an omission?

A. The bearing at three o'clock.

Q. Upon what day?

A. Upon the 28th.

Q. Upon the 28th by log?

A. Upon the 28th by log.

Q. Upon the day of action?

A. The day of action.

Adm. Montagu. He says, he inserted it since the engagement, not since it lay upon the table?

A. No; since the engagement, in over-hauling my remarks.

The Admiral. I ask when the Master did insert it? When did you insert it?

A. I don't know the day.

Q. Was it a great while ago or when?

A. It is within three weeks; a fortnight or three weeks.

Prosecutor. I ask if this is the original rough log-book; the book that is kept for the use of the ship, or is it a fair one?

A. There was no mate on board able to keep it; I was obliged to keep it myself.

Q. Was there any public log-book; a rough one for the use of all the quarter deck and officers?

A. There was a rough log-book the mate was to keep, but he was so neglectful that he did not copy it in the book, and there were several days omitted; but that is the proper log-book for the use of the ship; there is no other compleat log-book.

Adm. Arbuthnot. Was that log taken from the log-board?

A. Yes, by myself.

Prosecutor. Was not there a rough log-book kept for the use of the ship, taken daily by the mate, as is usual in all men of war, besides and independent of this?

A. No, Sir, not taken by me; that was taken by me from the board; I never trusted to the mate to take it off; the other I had for teaching the mate how to take the log off; it was very imperfect.

Court. Was that you have now here, and have now sworn to, taken from day to day, and the log you mean to support?

A. Yes, day by day.

The Admiral. From the log-board?

A. From the log-board.

Q. And every body admitted to copy from it?

A. Yes, and the only one on board I kept.

Court. The courses both ways were inserted?

A. Yes.

Q. This was inserted before it was brought into Court?

A. Some days before it was brought into Court.

Adm. Arbuthnot. This is not a copy of the rough log-book, but the rough log-book is a copy of this?

A. The rough log-book is a copy of this; it was to instruct the mate.

Q. This in fact is the genuine log-book of the Victory?

A. Yes; this was for the use of the ship; there was no other for it.

Prosecutor. I desire the Master will look at his log-book and give an account what alteration of wind there was between six o'clock and ten o'clock in the morning of the 27th?

A. One point on the face of the log-book.

Q. You will please to say what it was upon the 27th and 28th; the latitude and bearings and distance from Ushant, informing the Court what is the ship's reckoning?

A. Upon the 27th lat. 48. 31. N.

Q. The bearing of Ushant?

A. Ushant bore south 89 degrees, east 36 leagues distance.

Q. Now the 28th?

A. Latitude 48. 10 N. Ushant bore N. 75 degrees, east distance 27 leagues.

Q. I would ask the Master if those are his current reckonings or the back reckonings?

A. They are the current reckonings of the ship; I made no alterations, no corrections.

Court. Where they your day's works each day?

A. Yes, Sir.

Q. How was the wind and weather in the morning of the 28th?

A. The weather was squally, Sir.

Q. How was the wind?

A. The wind was about N. and by W. or W. and by N.

Q. Do you consider Ushant, with that wind and weather, as a dangerous lee shore?

A. With the wind and weather we then had I should have thought if we had been near it a dangerous lee shore.

Q. Would you consider it so when in the latitude of it or near it?

A. Ushant itself is a small spot, and a ship might clear it with the wind at W. N. W. in moderate weather.

Adm. Montagu. I beg leave to ask the Master one question? Should you chuse, if you was master of a flag-ship, with a fleet of thirty sail of the line, all of them in good condition and not disabled, should you chuse, on the afternoon of any day, tho' the weather is fine, to run nearer upon an enemy's shore than five or six leagues, night coming on?

A. No.

Q. I have one more question to ask you, not relative to the time off Ushant, but suppose you in the Victory going two knots, and a ship a stern of you going three knots, and three knots and four fathom, do you not think the ship a stern would come up with the ship a head that goes two knots?

A. I do, Sir.

The Admiral. If the British fleet, after the action on the 27th, had been caught in with Ushant, as they were a week or eight or nine days before, with the wind at north and by west as it was, and such a gale of wind, do you think they would not

not

have been in a perilous situation—recollect when the Victory broke her main yard—I mean on that day?

A. With the wind westerly as it was at that time, blowing hard as it did then N. and N. W. upon that day it would have been dangerous; they would have been in great danger.

Q. Does Mr. Madgson remember the Vice Admiral of the Red in the morning, after we stood up on the starboard tack, was upon the weather bow?

A. I don't recollect he was there; I don't recollect seeing him upon the weather bow; when I saw him I took notice of the ship; it was just before we wore; the Victory wore and then he was a point a-baft the beam.

Q. Does Mr. Madgson recollect whether the signal was made for the whole fleet to tack all together upon the 27th, or before or after?

A. The signal was made to tack at that time or about that time, a few minutes more or less; there was a general signal.

Q. Does Mr. Madgson recollect seeing, upon some change of the wind, whether one, two or three points, that the Vice Admiral of the Red came upon the lee-bow of the Victory about half after ten or eleven o'clock, or somewhere about that time?

A. I recollect seeing him near or about two points upon her lee-bow, or about two points.

Q. Does Mr. Madgson remember my having distinctly said (I believe to him) and he will remember it; and some others, look to leeward, the French fleet are now in a confusion, and observing (I believe) that one ship was almost a board of another?

The President made an objection to the question, as he thought it matter of private conversation.

The Admiral said, these are public remarks of an Admiral directing the whole fleet, and if what I said to the officers is not admitted, I can bring very little proof of my own actions; it is upon that ground I go; but I will wave the question.

President. Give me leave to say, there is a distinction between orders and conversation.

The Admiral. My orders come in consequence of conversation.

Adm. Montagu. I don't call this conversation; the question may be asked, did not the master see the French ships in confusion?

The Admiral. It was but in one instance conversation was objected to; but my conversation is what is directed by me and goes to my justification, or I could make no signal, I could give no orders—I walk the quarter deck and say to my Captain, do this or that because I ask so and so—all that must appear—but Sir Hugh Palliser asked Captain Bazeley those questions to his conversation—they were admitted—I would ask whether he observed what I said or no?

Prosecutor. Did I make use of conversation?

The Admiral. I can shew where you did—The whole of my conduct must appear from observation, and when I come upon it I shall be very minute. In regard to this question, I shall drop it, and ask the Master, if he observed whether the French ships upon the lee-bow had not the appearance of being in confusion?

Adm. Montagu. I look upon it every act said or done upon the quarter deck in a public ship, is public and not private conversation. It is impossible the Admiral can conduct his fleet without it. If every question or order he has given to his Aid de Camp to go down between decks with, if that is to be looked upon as private conversation I don't know what is to be called public.

The objection over-ruled by the Court.

The Admiral. I ask whether the French ships upon the lee-bow of the Victory had not the appearance of being in confusion?

A. They had.

The Admiral. I desire to take notice to the Court, the alterations the Master made in the log-book from recollection, is an insertion of one of the principal

facts which my accuser makes a matter of his charge, and certainly the Alteration will not appear as a crime against him. I beg it may be observed I took notice of it to the Court.

Adm. Arbuthnot. Did you wear with your head to the southward?

A. Yes.

HENRY COOPER, Master of the Duke, sworn.

Prosecutor. I would ask Mr. Cooper if the Duke did not fire into the Foudroyant on the 27th during the engagement by mistake?

A. Not to my knowledge?

Q. Ask Mr. Cooper, if he considers Ushant as a dangerous lee shore, with the wind westerly, moderate weather and Summer time?

A. No, at the distance we were at that time.

Q. Within any distance; within two leagues?

A. Within two leagues to be sure it is a lee shore.

Q. Do you consider Ushant as a dangerous lee shore with the wind westerly, moderate weather and Summer time and within the distance of two leagues and in the latitude of it or nearly to it?

A. Yes, I do, Sir.

The Court adjourned to the next day.

The Twentieth Day's Proceedings, Jan. 29, 1779.

THOMAS REID, Master of the Queen.

Prosecutor. I shall only ask the Master what was the situation of the Red division, with respect to the rear of the enemy, in the afternoon?

A. The Red Squadron was about two miles, as far as I recollect, from the rear of the enemy.

Q. Does the Master speak at the time they wore to stand from them, or is he speaking at a time earlier than that?

A. At the time we wore, when the signal was made for wearing, we were rather nearer than two miles when we first shortened sail.

Q. Do you mean upon the larboard tack?

A. I mean when we wore from the larboard to the starboard tack.

Q. Was you then to windward or to leeward, or in what position from them?

A. They were about a point on the lee-bow.

Q. I wish to ask the Master if this log-book he has given in is the original rough log-book that was kept for the ship's use on board the Queen, as it appears very clean and neat?

A. No, it is my own log-book, kept daily, and shewn every day.

Q. Where is the original rough ship's log-book?

A. At Plymouth.

Q. This is not the log-book that was delivered in before upon oath, is it?

A. Yes, it is.

Q. Is it the log-book you kept day by day during the time you was employed in that service?

A. Yes, it is.

Q. Is this the log-book that you can swear to more particularly than you could to the ship's log-book?

A. It is, being kept by myself every day.

Q. Is this taken from the ship's log-book, or the ship's rough log-book taken from that?

A. The Mates wrote the log-book. I took it off every day at ten o'clock myself from the log-board.

Q. Has there been any additions, alterations, or amendments, at any time whatsoever, from the time you first made it?

A. No, there has not, except in the articles of beef and pork, or such things, but nothing respecting those days in July, and nothing ever altered since the day after.

Q. You never, at any time, copied your day's work from the ship's log-book, in your book of occurrences?

A. Not at sea; harbour work frequently.

Q. Do you call the coming very near the rear of the enemy the distance of two miles?

H h. A. We

A. We were not within gun-shot of them at that time.

Q. But then do you mean within less than two miles by that?

A. Yes.

Prosecutor. There is a reference in part of the log-book instead of an interlineation, wrote with different coloured ink and a different pen, and I presume at a different time; I should be glad to know if this particular note was wrote at the same time with the rest; at this time the Victory hauled down the signal for battle, which is a reference up to the time, and the references to occurrences before. Was that wrote at the same time with the rest, it appears to be wrote with a different coloured ink and a different pen?

Court. Hand it down to the Master.

A. It was wrote some part of the same day, though not at the same time; it was omitted in writing off the log.

Q. I would ask the Master the reason that there is no log-mark from one o'clock till five in the afternoon of the day of the engagement; there is no hour, or notes, and, I think, no courses?

A. The reason was, that the variety of the distances and courses we steered, made it at the end of four o'clock, the same circumstances the courses we steered were too complicated to make any straight remark; we were never half an hour without running faster or slower.

Q. Is it usual for a person, at four or five o'clock, to omit the ship's course, some estimated rate or course, if you did not heave the log?

Admiral Montagu. Here is, at twelve o'clock at noon of the 27th, the courses various; they continued to vary till four, then it gives the South and West course. Why give it at that time? Because all hurry was over, the ship was at rights, they could then attend to it. During the time the ship was in action, and not set to rights, there was not the same attention paid to it.

Captain Duncan. It is of no consequence whether there is every hour or no.

Prosecutor. There is no rate of the ships going for that particular time.

Admiral Montagu. I did not understand the log-books were called for to this board to be examined, to have this matter tried by the log.

Admiral Arbuthnot. There is the term various here, what does that imply for the five hours? What do you put it there for? Is it only for the twelve o'clock?

A. She was at such a variety of courses, it was impossible to make it straight; I judged myself which way she would be at the end of the watch.

Captain Duncan. Suppose it was not marked at all, what then? We may set here to the day of judgment, if you go upon examining every book so.

Prosecutor. Is it usual for four or five hours to omit giving some estimate of the rate and course upon the log-book?

A. In cases of that particular circumstance I apprehend it would never be censured.

Court. You are asked, by the oath you have taken, what you mean by the word various; did you only mean at twelve o'clock, or till you took notice of the wind and weather again?

A. With respect to the variety of courses, it is meant she was not constantly the same course from eleven to twelve.

Prosecutor. Is not that the whole time which the log is omitted to be marked for, the time after you came out of the engagement?

A. Part of it is, and part not.

Q. At what time did the Queen come out of the engagement?

A. About half an hour after twelve, as near as we could judge.

Q. Then is not the time spoken of, in which the log is not marked, after that hour?

A. The log was not marked till we were a little settled, and the ship in her station; in fact, during the time it was not marked, we tacked and

wore, forming a line, and in different situations, such as would not admit of any straight course.

Q. Is the Master sure there was nothing marked for those hours in the original rough ship's log-book?

A. There is not; I have seen it.

Q. I would ask the Master the reason why one of the leaves of that log-book of his was cut out, the leaf before that of the 25th, when the French fleet were in sight?

Court. It is not the 25th but 24th.

A. This book, after the ship was cleared, was left out and got blotted, by which means I cut it out, and had a fair book, as it was shewn to the Admiral every day.

Court. Do you mean leaf or book?

A. Only that leaf.

A Member of the Court. That the book should be fair and clean, and no blotting, he means.

A. Yes.

Prosecutor. The Master will look at the log-book to refresh his memory, and inform the Court how much the wind shifted from six o'clock till ten in the morning of the 27th?

A. About two points.

Q. Does it appear so by the log-book?

A. By the log-book, no.

Q. Is it one or two by the log?

A. One point.

Q. Does the Master remember taking notice of the French fleet in the morning of the 27th, what time he first took particular notice of them?

A. I did not take particular notice of them till we tacked at ten o'clock.

A. I did not take particular notice of their manœuvring, being busy about our own ship.

Court. Have you your day's work of the 27th and 28th of July?

A. Yes.

Q. Give an account of them on the 27th and 28th, each day at noon.

A. The 27th, at noon, the latitude 48. 36. N. Ushant S. 86. E. 28 leagues distance.—The 28th, latitude 48. 8. Ushant N. 74 E. distance 26 leagues.

Q. On the morning of the 28th, Sir, what part of the French fleet was seen from the Queen?

A. Three sail, imagined to be part of the French fleet.

Q. Were no other ships seen that were supposed to be the French fleet?

A. Not that I heard of, I could see none.

Q. Was not a signal made on board of the Queen of seeing a fleet?

A. Not to my knowledge, not on the 28th.

Q. How was the wind and weather on the morning of the 28th?

A. The wind was westerly, and moderate weather.

Q. Was the wind and weather such as you would have advised not to chase an enemy, a flying beaten enemy, towards Ushant, from any apprehension of danger from Ushant being a lee-shore?

A. Ships might have chased that were not disabled, without considering Ushant as a dangerous lee-shore.

Q. Were any part of the fleet dismasted?

A. None was dismasted, many of them appeared very crippled.

Q. And was that appearance of being crippled in the sails and rigging only, or how; did it appear they were crippled in their masts?

A. It appeared in their masts, some of them were deficient, several were preparing, in appearance, to fish their top-masts, many of their top-masts being uncapped.

Q. In what situation must a ship be, and in what weather, to make Ushant a dangerous lee-shore?

A. When

A. When they are prevented carrying sail, owing to a variety of accidents, or blowing hard.

Cross examination.

Captain Duncan. I must beg not to go into any more log-book examinations, our time has been taken up in examining Masters for nothing at all. I suppose these books were put upon the table for our own instruction, and not for matter of such examination as this. We have heard nothing but this examination of the Master of the Queen for the last hour, partly to no purpose.

Admiral Montagu. It is not to the point, in fact it is not what we are sent here for; we are sent to try Admiral Keppel, and this is trying the Masters; we are prolonging time, and to no purpose, and it can have no weight with this Court.

The Admiral. Let it be taken down, I have no objection to their looking into my log-book to find out any thing, one way or the other, or any way that he can come at any thing.

Prosecutor. After what the Admiral has said, I presume it may be allowed. I only speak in consequence of what the Admiral has said; he has no sort of objection to my making observations upon the log-book.

The Admiral. I beg pardon, as to making observations I object, asking questions to it is another matter.

Prosecutor. As to what has relation to the trial in hand I only observe, the Victory's log-book, from the time of passing the enemy till five o'clock, there is only one knot and five fathom marked upon it, the rest of the time is said to be lying-to.

The Admiral. If the Vice Admiral has not asked that question of the Master, he may still ask it of the Master if he pleases; the word lying-to, one way or other, does not seem to me to be evidence at all.

Prosecutor. A great deal has been commented upon particular log-books which happened to be first inspected, which occasioned many observations, which is only to shew that log-books are such things that they are consequently liable to such alterations or amendments, and errors and such things as we now find in them all.

The Admiral. I must observe one thing, whenever I am called to give my oath to that I will give it. I never saw that log-book, or directed it one way or other. I never saw it till I was at sea the second time, therefore I have nothing to do with what is marked in that log-book.

Prosecutor. I suppose it was so.

Admiral Arbuthnot. I must beg leave to say, in reply to Sir Hugh, that the first doubt about log-books did not proceed from you, Sir Hugh, nor from the Admiral, nor from the Court, but from the Masters refusing to give an oath to the log-books, that was the first cause of their examination, one of them saying the reason he could not swear to it was, because there were alterations and additions put in, long after the log-book was marked, and after it was known the Admiral was to be tried.

Admiral Montagu. We shall never have done if we enter into a House of Commons argument, it is not the business of a Court Martial.

President. Swear the Witness.

President. I am directed by the Court to tell you, you will answer the questions asked you relative to the transactions of the 27th and 28th; when you are asked to opinion, you may give your opinion, or not, as you shall think proper.

RICHARD SEARLE, Master of the America,
sworn.

Prosecutor. Is this the ship's log-book; was the ship's log-book copied from this, or this from the ship's log-book?

A. This book I wrote myself every day at sea.

Q. Day by day at sea?

A. Day by day at sea.

Q. No alterations made since?

A. No alterations made since.

Q. No erasements?

A. No erasements.

Prosecutor. Let the Master look at the log-book to refresh his memory, and inform the Court what alteration of wind there was from six o'clock to ten, when the fleet tacked upon the 27th; whether there was any shift of wind, and how much, from six o'clock to ten?

A. The wind shifted about four points, from S. W. to W. at ten o'clock.

Prosecutor. Is it so in the log?

Admiral Montagu. I shall beg the Master will give an answer to that from the oath he has taken, of his own knowledge and not the log-book; if he has a doubt he may look and see how it is there; if he has no doubt, you are to say whether the wind did shift four points from six to ten?

A. To the best of my recollection it shifted about four points between nine and ten.

Q. Are the courses allowed in your reckoning, according to that shift of wind, or according to what it is in the log-book?

A. The courses are as they are in the log-book; the shift of wind is not mentioned in the log-book.

Q. I would ask the Master how the wind and weather was on the morning of the 28th?

A. The wind was about West, as near as I can recollect, and moderate weather.

Q. Would you have advised not to have chased a flying enemy, at that time, for fear of making Ushant a lee-shore, at that time of the year too?

A. I should not be afraid of making Ushant a lee-shore till I drew within three or four leagues of land.

Q. Under what circumstances must a ship be to make Ushant a dangerous lee-shore, what kind of weather?

A. When a ship is between Ushant and the Seams, with the wind at W. or W. N. W. blowing a gale of wind, I should suppose her in danger.

Q. Until a ship comes between Ushant and the Seams, do you consider her in eminent danger if she was without that, supposing it moderate weather?

A. Not in the least danger if she could carry sail.

Q. Then until a fleet of thirty sail, and some of them disabled, comes between Ushant and the Seams, would you consider that fleet in great danger, while they were without, supposing it moderate weather?

A. Not if they were three or four leagues without the line of Ushant and the Seams.

Q. You have said a single ship is not in danger between Ushant and the Seams, you would consider it not in danger; whether one ship or thirty, if they can all carry sail, is it not the same thing, in moderate weather, and at such a time of year?

A. I look upon it one ship will get off the land much faster than a fleet of ships could, even in moderate weather.

Prosecutor. I have no more to ask him.

The Admiral. Sir, I am not one of the elder brethren of the Trinity House, and therefore I shall not ask this man any questions.

THOMAS BAILEY, Master of the Foudroyant,
sworn.

Prosecutor. I would ask the Master whether this is the original ship's log-book, kept on board the Foudroyant?

A. It is the log-book I received from the Master I succeeded in the ship.

Court. You was Master of her in the time of the action?

A. Yes, Sir.

Q. And you have kept it from day to day from the 28th?

A. Con.

A. Constantly.

Q. From day to day?

A. Yes.

Q. Was there any other book for the use of the quarter deck?

A. They had some old book in the orlop; there was one for the use of the Midshipmen and Mates.

Q. Was no part of this book ever copied from that?

A. No.

Q. Then this is not the public ship's log-book every body had access to, but the other?

A. Never any body but the Captain and Lieutenants had access to this.

Q. Did the other log-book and this exactly agree, Sir?

A. I never looked at the other.

Q. Has the Master brought his day's work?

A. They are in the log-book.

Prosecutor. Please to mention the latitude, bearings, and distance of Ushant of the 27th and 28th of July.

A. Latitude upon the 27th, 48. 38. bearing Ushant East half South, distance twenty-seven leagues.

Q. Now the 28th?

A. Latitude 48. 17. Ushant East 11 degrees North, distance twenty-one leagues.

Prosecutor. I desire the Master will look at his log-book to refresh his memory, and inform the Court how much the wind shifted in the morning of the 27th, between six o'clock and ten o'clock?

A. I don't recollect it shifted at all in that time.

Court. Did it shift afterwards?

A. Yes.

Q. At what time, and how many points?

A. Between ten and twelve it shifted two points.

Q. I would ask the Master what kind of weather it was on the morning of the 28th?

A. I don't recollect, I may have leave to refer to the log-book. Fresh gales.

Q. What kind of weather was it?

A. Cloudy.

Q. Under the circumstances of the wind and weather, as it then was, would you, as Master and Pilot, have objected to chasing a flying beaten enemy, from any apprehension of Ushant being a dangerous lee shore?

A. It must depend upon the circumstances of the ship I was in.

Q. Suppose a ship that can carry sail with all her masts standing?

A. If every thing was standing, as a man of war, I should have no objection to chasing.

Captain Duncan. In the condition the Foudroyant was in would you have objected to chasing?

A. Yes.

Q. At that distance from the land would you have thought yourself in danger?

A. Not at that distance.

Q. What sail could she have carried upon a wind?

A. A third reefed top-sail.

Q. Would she have been able to carry her top-sails with three reefs in, supposing yourself within four miles of Ushant, the wind at W. or W. N. W. the variation in your favour too, and in the latitude, or nearly the latitude of Ushant?

A. Yes, she might have carried that, but not more.

Q. The question is, if she would, under those circumstances, have been in any danger?

A. Yes, Sir.

No cross examination.

JOHN FORBES, Master of the Berwick, sworn.

Prosecutor. I will not ask the Master any questions about the log-book, there will be no occasion for it, I will only make one observation; there is a great many additions on the 28th of July wrote in a different hand and different ink: I dare say they are all facts and innocent, and I

have no ill meaning by it, but only to observe there is that circumstance attends the log-book.

A. There is nothing in that log-book but what I saw myself, and put down myself at twelve o'clock the same day. Nothing after twelve o'clock.

Q. I only ask the Master if, during the engagement on the 27th of July, some of our ships did not fire into the Berwick?

A. Not to my knowledge, Sir; not that I know of: I heard it by report from the ship's company, but not to my own knowledge.

Q. By that report was it not said some men were killed by it?

A. Not to my knowledge.

Q. Did you receive no shot on the larboard-side?

A. None that I saw.

Prosecutor. Mr. President, the Court, I imagine, are pretty well tired about the chapter of log-books and lee-shores, and would, I apprehend, not chuse any more upon that subject; I only mention one circumstance relative to them, which is to inform the Court, that the expresses that were sent after Lieutenant Parry, who is supposed to have a minute-book of the Formidable, has not yet produced any account of him; but by a letter from the Secretary of the Admiralty, I am informed expresses were sent to meet him at the Nore, it being supposed the tender he is in is upon her way to the Nore; but if he should come before the proceedings are closed, and the Court, or Admiral Keppel, should desire any farther explanation, I request that Mr. Parry may be examined when he does come: I am also ready to produce any other information in my power relative to the Formidable's log-book, which the Court or Admiral Keppel should require. As to the log-book of the Robuste, I think it is unnecessary to take up the time of the Court with any farther examination about it: Upon the one hand, Captain Hood acknowledges what additions and alterations were made, and upon the other hand, it is not yet pretended that those alterations and additions are in the least contrary to truth, therefore I shall offer nothing more upon the subject of log-books, except the Court have any more to require upon any particular point. The letter that was read some days ago, sent to the Secretary of the Admiralty, mentions another letter having been sent of the preceding day, on the 24th. I desire that letter may be read.

Court. That is not a letter of the 27th.

Prosecutor. It is dated the 24th of July, Sir, wrote to the Secretary of the Admiralty; it is a public letter.

The Admiral. Sir, before that goes on, I beg to speak to you relative to what the Vice Admiral said before; as I shall not trouble the Court with any further examination concerning the Formidable's log-book, so neither shall I object to the Vice Admiral's calling witnesses to that matter during the progress of this cause. With respect to the additions and alterations in the log-book of the Robuste, I shall take the freedom to offer some observations, as well as evidence, to shew the danger, mischief, and falsehood of such alterations. In regard to the letter of the 24th, it will run readier for information if another letter is read of the 23d as well as the 24th.

Prosecutor. I only want the 24th, the rest may be read at any other time.

Prosecutor. A letter has been read, dated the 30th, I desire that the letter of the 24th may be read; if the Admiral desires any other letters, or all the other public letters to be afterwards read, in course of his defence, I cannot have any objection; but I desire only the letter of the 24th to be read now.

Court. Let that be read; if you (meaning the Admiral) call for another afterwards, it shall be read.

The

The Admiral's letter, to the Secretary of the Admiralty, of the 24th of July, read.

To PHILIP STEPHENS, Esq. per the Peggy Cutter.

Victory, at Sea, 24th of July, 1778, 5 P. M.

S I R,

" I dispatched the Peggy with my letter to you yesterday afternoon, and about one hour after she left me, the French fleet tacked and stood towards the King's fleet; they nearly steered for us, the wind at W. N. W. As night was so near, and action at night always to be avoided, I brought the fleet to, on the larboard tack, leaving the option in the French; it blew very hard in the western quarter great part of the night, and in the morning the French fleet were seen to the N. W. one of their ships crippled in her fore-top-mast, one of Vice Admiral Palliser's in the loss of a main-top-sail-yard. The French have been in the wind's eye the whole day, and have had the choice with them continually to come to action; both fleets are now standing to the South West, Ushant bearing S. 54° E. 22 leagues. The French spread with their frigates so greatly, that I should fear single ships attempting to join the fleet under my command, run much risque of being intercepted.

" I am, SIR, your most obedient,

" And very humble servant,

A. K E P P E L."

" P. S. We count of the French 40 sail great and small."

Prosecutor. The Admiral having signified to the Court that he means to call for evidence to prove the falsehood of the additions in the Robuste's log-book, it is a justice due to the character of Captain Hood, that I should intreat that the Court will, in case of any such attack, give Capt. Hood an opportunity of justifying himself.

The Admiral. The Court will do what is just and right upon such an occasion.

Prosecutor. Mr. President, I have now finished my evidence; I have prepared a few words, by way of address to the Court, which I desire the Judge Advocate may be permitted to read.

The Admiral. Mr. President, the evidence upon the part of the accusation being now closed, I trust it is not presumptuous in me to declare, that I do not resist the prosecutor's claim to address the Court by a speech from any imagination of danger to me; but as I have never known nor heard of any such attempt in any Court Martial before, and as such permission may be attended with ill consequences in others that may be governed by the precedents of this, I trust my cause, that is sufficiently new in many respects, will not be distinguished with any such innovation.

Prosecutor. Conceiving myself intitled to address the Court, at the close of the evidence for the Crown, I cannot consent to wave it, but must take the opinion of the Court.

The Admiral. I mean, that my accuser has no right to make a speech as to the merits of the case in any part of this cause.

The Court withdrew and came to the following resolution:

Judge Advocate. It not occurring to any member of the Court it has ever been the usage of a Court Martial to receive any thing upon the part of the accuser, after declaring he had gone thro' all the witnesses in support of the charge, it is upon this occasion agreed, that the paper now offered by the accuser cannot be admitted.

Prosecutor. As the Court was withdrawing,

Admiral Keppel insisted, that the prosecutor had no right to address the Court upon the merits of the case.

Mr. President. I don't remember Admiral Keppel insisted upon any thing.

The Admiral. If it is any satisfaction I will read what I said; I mean, that my accuser has no right to make a speech as to the merits of the cause in any part of this cause.

Prosecutor. Then I say, as the Court was withdrawing Admiral Keppel having said he means that the accuser has no right to make a speech as to the merits of the cause in no part of the cause, it is material to me, to know whether I am to be at liberty to address the Court with my observations at the close of the evidence upon each side; I request to be informed of the Court's opinion upon that point.

Prosecutor. In this conversation I beg to know if what I said is taken down.

The Admiral. I shall oppose it to the last minute, I shall only repeat the same words.

The Judge Advocate read Sir Hugh's last speech.

The Admiral. I did object, but really as the Judge Advocate read the resolutions of the Court, they seem to have understood the objection I had made, and they seem to me to have decided it.

The Court desired the Judge Advocate to read the resolution again, it was read accordingly.

Prosecutor. In addition to the last thing read of the Admiral's, I desire his declaration may be inserted of opposing to the last minute.

Admiral Montagu. I did understand that when we withdrew to debate upon what the Prosecutor desired, and had returned, we directed the Judge Advocate to read something from which it appeared we had come to a resolution or a determination, which has been read to the Court. After that, I believe it ever has been customary by Courts Martial, that nothing more shall be said upon the subject, but the prisoner is left at large to say any thing he pleases before he calls evidence, which is his defence; then we are to go on with the other proceedings of the Court Martial; how far you will admit the prosecutor to say any thing after the prisoner has called all his evidences is another matter, and then the Court is to debate upon it, till then I desire no farther objections upon the part of the prosecutor.

Prosecutor. I only mean to insert in the minutes, the declaration of Mr. Keppel to oppose it to the last moment.

Admiral Montagu. I humbly move, Mr. President, that nothing is put into the minutes after your resolution, till such time as the prisoner begins to make his defence.

Admiral Arbuthnot. What drops from the lips of Mr. Keppel or Sir Hugh, in such a conversation, is nothing to us.

Admiral Montagu. I am of the same opinion.

Admiral Arbuthnot. We are to be determined by other matters.

Admiral Montagu. Whatever they may say afterwards, when the prisoner's evidences are examined, I shall be extremely ready to hear; every thing the prosecutor has to say, and every thing the prisoner has to say, I shall to the best of my knowledge determine upon it. If it is a point to be debated, I shall be ready to go out and debate upon it.

Judge Advocate. Is it the resolution of the Court, the last expressions of Sir Hugh Palliser should be expunged.

Court. Every part that comes after our resolution should be expunged.

The Court agreed to it unanimously; it was accordingly expunged.

(The Court adjourned to the next day.)

T H E
S P E E C H
O F T H E
Honourable Augustus Keppel,

Before the Court Martial, in opening his Defence.

J A N U A R Y the 30th, 1779.

Mr. President and Gentlemen of the Court,

I Am brought before you, after forty years service, on the charge of an officer under my command, for a variety of offences, which, if true or probable, would be greatly aggravated by the means I have had, from a long experience, of knowing my duty, and by the strong motives of honor, which ought to have incited me to perform it to the very utmost extent of my ability.

Sir Hugh Palliser, an officer under my orders, conceives that I have acted very irregularly and very culpably in the engagement with the French fleet on the 27th of July last; so very irregularly, and so very faultily, that I have tarnished the lustre of the navy of England.

Possessed with this opinion, on our return to port after the action, he has a letter from the Lords of the Admiralty put into his hands, giving me in the most explicit terms, his majesty's approbation for a conduct, which he now affects to think, deserves the utmost disapprobation, and the severest censure; and he, with the other Admirals and Captains of the fleet, to whom it was likewise communicated perfectly acquiesces in it.

With the same ill opinion of my conduct in his bosom, he goes to sea again under my command; he goes to sea under me, without having given the least vent to his thoughts, either by way of advice to myself or of complaint to our common superiors.

He afterwards corresponds with me on terms of friendship; and in this correspondence he uses expressions, which convey a very high opinion of my disinterestedness, and of my zeal for the service.

After all this I come home; I am received by his majesty with the most gracious expressions of favour and esteem; and I am received in the most flattering manner by the first Lord of the Admiralty.

Several weeks past, when at length, without giving me any previous notice, the Board of Admiralty send me five articles of charge, on which they declare their intention of bringing me to my Trial, these charges are brought by Sir Hugh Palliser; who nearly at the same time publicly declared, that he had taken this step from an opinion, that he himself lay under an imputation of disobedience to my orders, and that this imputation was countenanced by me. I may say without the least hesitation, that if I should be censured on such a Charge (which in this Court and with my Cause I think impossible) there is an end of all command in the Navy. If every subordinate Officer can set up his judgment against that of his commander in Chief; and after several months of insidious silence, can call him to Trial, whenever he thinks it useful for the purpose of clearing away imputations on himself, or in order to get the start of a regular charge, which he apprehends may possibly be brought on his own conduct; there can be no service.

If the charges of my accuser could be justified by his apprehensions for himself, he has taken care to prove to the Court, that he had very good rea-

son for his fears: but if these charges are to be considered as supported upon any rational ground, with regard to the nature of the offence, or any satisfactory evidence with regard to the facts, as against me, he makes that figure, which I trust in God, all those who attack innocence will ever make.

In your examination into that judgment, which my officer, in order to depreciate my skill and to criminate my conduct, has thought proper to set up against mine, you have very wisely, and according to the evident necessity of the case, called for the observations and sentiments of all the officers who have served in the late engagement; so far as they have been brought before you by the prosecutor, I take it for granted, you will follow the same course with those that I shall produce. If this should not be done, an accuser (according to the practice of mine) by the use of leading questions, by putting things out of their natural order, by confounding times, and by a perplexed interrogatory concerning an infinite number of manœuvres and situations, might appear to produce a state of things directly contrary to the ideas of those who saw them with their own eyes. I am astonished, that, when an officer is accused by another of crimes, which, if true, must be apparent to a very ordinary observation and understanding, that any witness should, on being asked, refuse to declare his free sentiments of the manner in which the matters to which he deposes have appeared to him, I never wished, that any gentleman should withhold that part of his evidence from tenderness to me; what motives the accuser had for objecting to it, he knows.

The plainest and fullest speaking is best for a good cause. The manifest view and intention that things are done with, constitute their crime or merit. The intentions are inseparably connected with the acts; and a detail of military or naval operations, wholly separated from their design, will be nonsense. The charge is read to a witness, as I apprehend, that he may discern how the facts he has seen, agree with the crimes he hears charged. Otherwise I cannot conceive why a witness is troubled with that reading. The Court can hardly enter fully into the matter without such information; and the world out of our profession cannot enter into it at all; these questions I am informed are properly questions of fact; and I believe it, they are perfectly conformable to the practice of Court-Martials; but if they were questions to mere opinion, yet the Court, not the witness, is answerable for the propriety of them. Masters have been called here by the prosecutor (and the propriety not disputed) for mere opinions, concerning the effect of chasing on a lee-shore, in higher matters higher opinions ought to have weight; if they ought, there are none more capable of giving the Court information than those who are summoned here; for I believe no country
ever

ever was served by officers of more gallantry, honour, ability, and skill in their profession.

You are a Court of honour as well as of strict Martial Law, I stand here for my fame, as well as for my life, and for my station in the navy, I hope therefore, that in a trial, which is not without importance to the whole service, you will be so indulgent as to hear me with patience, whilst I explain to you every thing that tends to clear my reputation as a man, as a seaman, and as a commander. I will open it to you without any arts; and with the plain freedom of a man bred and formed as we all are.

As I am to be tried for my conduct in command, it is proper I should lay before you, my situation in that command, and what were my motives for the several acts, and orders on account of which I stand charged. I must beg leave to make some explanation of these before I enter upon the accusations, article by article.

To the five special articles of the charge, you may depend upon it, I shall give full, minute, and satisfactory answers, even on the narrow and mistaken principles on which some of them are made. But I beg leave to point out to you, that there is a general false supposition, that runs through the whole, in censuring me for misconduct and neglect of duty, my accuser has conceived very mistaken notions of what my duty was; and on that bad foundation he has laid the whole matter of his charge.

I think myself particularly fortunate, in being able to make out by evidence at this distance of time, with so much exactness as I shall do, the various movements which were made or ordered in the action of the 27th of July, it is a piece of good fortune which cannot often happen to a Commander in Chief in the same circumstances. In an extensive naval engagement and in the movements preparatory to it, subordinate officers if they are attentive to their duty, are fully employed in the care of their own particular charge; and they have but little leisure for exact observation on the conduct of their commander in chief, it is their business to watch his signals, and to put themselves in a condition to obey them with alacrity and effect. As they are looking towards one thing and he is looking towards another, it is always a great chance whether they agree, when they come to form an opinion of the whole.

You are sensible gentlemen, that one of the things which distinguish a commander in chief, is to know how to catch the proper moment for each order he gives, he is to have his eye on the enemy, the rest ought to have their eyes on him, if those subordinate officers, who are inclined to find fault with him, do not mark the instant of time with the same precision which he does, their judgment will often be erroneous; and they will blame where perhaps there is the greatest reason for commendation.

Besides it must be obvious, when we consider the nature of general engagements, that in the multitude of movements that are made, and the variety of positions in which ships are successively found, with regard to one another, when in motion over a large space, (to say nothing of the smoke) things scarcely ever appear exactly in the same manner to any two ships. This occasions the greatest perplexity and confusion in the accounts that go abroad, and sometimes produces absolute contradictions between different relators and that too without any intentional fault in those who tell the story. But wherever the commander in chief is placed; that is the center of all the operations; that is the true point of view from which they must be seen by those who examine his conduct; because his opinion must be formed, and his conduct regulated by the judgment of his eye upon the posture in which he sees his objects, and not from the view which another in a different, and perhaps distant position has

of them: And in proportion as he has judged well or ill upon that particular view, taken from that particular position (which is the only point of direction he can have) he deserves either praise or censure.

On these principles I wish my manœuvres to be tried, when the proper consideration is whether they have been unskilfully conceived, or as the charge expresses it, in an un-officer-like manner. But my reasons for preferring any one step to another stand upon different grounds, all that he charges as negligence was the effect of deliberation and choice: And this makes it necessary for me to explain as fully, as I think it right to do, the ideas I acted upon.

I am not to be considered in the light in which Sir Hugh Palliser seems to consider me, merely as an officer with a limited commission, confined to a special military operation, to be conducted upon certain military rules, with an eye towards a Court Martial, for my acquittal or condemnation as I adhered to those rules, or departed from them. My commission was of a very different sort. I was entrusted with ample discretionary powers for the immediate defence of the kingdom. I was placed in some sort, in a political as well as a military situation; and though, at my own desire for the purposes of uniformity and secrecy, my instructions came to me through the Admiralty alone, yet part of them originated from the Secretary of State as well as from the Board. Every thing which I did as an officer was solely subservient and subordinate to the great end of the national Defence. I manœuvred; I fought; I returned to port; I put to sea; just as it seemed best to me for the purpose of my destination. I acted on these principles of large discretion; and on those principles I must be tried. If I am not, it is another sort of officer; and not one with my trust and my powers that is on trial.

It is undoubtedly the duty of every sea officer, to do his utmost to take, sink, burn and destroy the enemy's ships wherever he meets them. Sir Hugh Palliser makes some charge on this head, with as little truth, reason, or justice, as on any of the others. He shall have a proper answer in its proper place; that is when I come to the articles. But in justice to the principles, which directed me in my command, I must beg leave to tell you, that I should think myself perfectly in the right, if I postponed or totally omitted that destruction of ships in one, in two, or in twenty instances, if the pursuit of that object seemed to me detrimental to matters of more importance, otherwise it would be a crime for a commander entrusted with the defence of the kingdom, to have any plan, choice, or foresight in his operations, I ought to conduct myself, and I hope I did, in each particular, by my judgment of its probable effect on the issue of the whole naval campaign, to which all my actions ought to have a relation. Without attending to that relation, some particulars of my conduct on the 27th and 28th of July, cannot appear in the light which I imagine they are fairly intitled to, and some circumstances of my lenity towards Sir Hugh Palliser, will incur a censure they do not deserve.

I have reflected again and again on that business; and if I were to be once more in that situation, I am persuaded that I should act in all respects very much in the same manner, I have done my best and utmost; not merely to comply with an article of war (I should be ashamed that such a thing, at such a time could have engaged my thoughts) but to defend the kingdom; and I have reason to thank God, that whatever obstructions I met with in service, or whatever slanders and accusations have followed me afterwards, the kingdom has been defended.

My capacity may be unequal to the trust which was placed in me. It is certainly very unequal to the warm wishes I have ever felt for the service of my country. Therefore if I had intrigued or solicited

cited the command, or if I had bargained for any advantage on accepting it, I might be blamed for my presumption. But it came to me intirely unfought, and on accepting it, I neither complained of any former neglect, nor stipulated for any future gratification.

It is upwards of two years ago, that is in November 1776, that I received a message from Lord Sandwich brought to me by Sir Hugh Palliser, that the appearance of foreign powers in our disputes, might require a fleet at home; and that he had his majesty's orders to know whether I would undertake the command. I said that I was ready to attend and give my answer in person to the king.

Being admitted into the closet I gave such an one as seemed satisfactory to his majesty; and having delivered my opinions with openness, I ended with a declaration of my willingness to serve him, in the defence of this country and its commerce, whenever I should be honoured with his commands and as long as my health permitted.

The appearance on the part of foreign powers not continuing (I suppose) to give so much alarm, I heard no more of the command from November 1776, to February or March 1778. At that time I had hints conveyed to me that I might soon be wanted, I was as ready to obey the King as I had been sixteen months before; and when required to serve; I had two or three audiences of his majesty before I left London finally to hoist my flag. I must remark, that I took the freedom to express to his majesty, that I served in obedience to *his* commands; that I was unacquainted with his ministers, as ministers; and that I took the command as it was, without making any difficulty, and without asking a single favour; trusting to his majesty's good intentions, and his gracious support and protection.

Circumstanced as I was, I could have no sinister and no ambitious views in my obedience. I risked a great deal and I expected nothing. Many things disposed me rather to seek my ease than any new employment, and gave me a very natural reluctance to put a situation so difficult to mend, to any new hazard.

That hazard, Gentlemen, is very great to a chief commander who is not well supported at home, the greater the command, and the larger the discretion, the more liable the commander is, in the course of service, to haughty, ignorant, envious, or mutinous objections to his conduct; and if he has not a candid, an equitable acceptance of his endeavours at home, his reputation may be ruined, his successes will be depreciated, and his misfortunes, if such should befall him, will be turned into crimes. But the nation was represented to me, by those, who ought best to know its condition, as not in a very secure state. Although my forty years endeavours were not marked by the possession of any one favour from the crown (except that of its confidence in time of danger) I could not think it right to decline the service of my country.

I thought it expedient to lay before you a true state of the circumstances under which I took the command, that you might see, that if I am that incapable and negligent officer which this charge represents me, I did not intrude myself into command, that I was called to it by the express orders of my sovereign, that these orders were conveyed to me by his chief minister of the marine, with great seeming concurrence and approbation, that the messenger, (who also appeared to be perfectly pleased with his errand) was no other than Sir Hugh Palliser my accuser; who ought to have been a judge of my ability from a very long acquaintance, and that lastly, this was no matter of surprize and hurry; since they had sixteen months time to consider and canvass my fitness for a great discretionary trust, before they placed it in my hands.

If I gave no just cause of doubt about my real character before my appointment, I gave as little cause of uneasiness afterwards. From the moment of my taking the command, I laid down to myself one rule, which in my opinion, where there are honest intentions on all sides, does more to ensure success to service, than almost any other that can be conceived; which was "*to make the best of every thing*". The whole fleet will bear me witness, that it was not my custom to complain, though it is generally thought good policy to be very exact by way of precaution, if any thing was defective, I stated it in confidence, and with good humour to the first Lord of the Admiralty, I received my supplies with acknowledgement; what could not be helped, I concealed; I made no noise; nor encouraged, much less excited any murmurings in or out of the fleet.

I corresponded with the noble earl at the head of the Admiralty; and I did every thing with reference to him exactly in the same way as if my best and dearest friends were in that department. Having none but the plainest intentions, I was much more willing to take any blame upon myself, than lay it upon those who sent me out, or on those who served under me; I was open and unguarded, in general I studied my language very little, because I little suspected, that traps would be laid for me in my expressions, when my actions were above reproach.

I very soon found how necessary it was for one in my situation to be well supported by office. On my first going to Portsmouth, which was in March last, I was made to believe, that I should see a strong and well appointed fleet ready for sea. An opinion of that kind was circulated very generally. There were not more than six ships of the line assembled and in any condition to go upon service; of them, all I shall say is, that on reviewing them with a seaman's eye, they gave me no pleasure; whilst I continued at Portsmouth, I believe four or five more arrived. I returned to town without making any noise; I represented amicably this state of things. I was told that the ships were collecting from other parts, and from sea; and I must say, that from that time forward, great diligence was used; as much, I believe, as was possible. If there had not, we never could have sailed, even with the force we went out with.

On the thirteenth of June, I set sail from St. Helens with twenty ships of the line; well enough equipped; that is, neither of the best nor the worst I had seen. I was hardly on my station, when a new occasion occurred, to shew me, how much a commander, entrusted as I was, must take upon himself; how much he must venture on his own discretion, and how necessary it is for him to have a proper support. The circumstances of my falling in with the French frigates, Pallas and Licorne, and of the chase, and the engagement with the Belle Poule, (so honourable to Captain Marfhal) are fresh in your memories. I undertook the affair at my own risque. War had not been declared, nor even reprisals ordered. My situation was singular, I might be disavowed, and a war with France laid to the account of my rashness. There was not wanting some discourse of that tendency, among people whose opinions are of moment.

I represented what I had done and to this hour I have not received one syllable of direct or official approbation of my conduct.

I found however that the taking of the ships was important to the state, the papers I found in them and the intelligence I received by that means filled me with the most serious apprehensions. I was on the enemy's coast with twenty sail of the line there were thirty two in Brest road and Brest water, and frigates more than treble my number.

My orders to sail with twenty ships could not have been upon a supposition of my having to deal with a force.

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I know what can be done by English officers and English seamen, and I trust to it as much as any man, I should not be discouraged by some superiority against me in ships, men and metal, but I have never had the folly to despise my enemy, I saw that an engagement under such circumstances of decided superiority on the part of France, would hazard the very being of this kingdom. If our fleet should be destroyed, it was evident that the French must become masters of the sea, for that campaign at least, whether we could ever repair the loss is not very clear to me, when I consider the state of our naval stores at that time, and the extreme difficulty of a supply, as long as the French should continue superior in the channel.

It is impossible to say to what such a calamity might not lead; I was filled with the deepest melancholy I ever felt in my life, I found myself obliged to turn my back on France, but I took my resolution. I again risked myself on my own opinion. I quitted my station, my courage was never put to such a trial as in that retreat, *But my firm persuasion is, that the country was saved by it.* Those in power, who must have understood the state of the fleet, and of the kingdom, were the best able to discern the propriety of my conduct. But I was permitted to go out again in the same important command, very unworthy of the trust if I had done amiss: very deserving of commendation and thanks, if at my own risk I had preserved the country from no slight danger; one or other of these was certainly the case, but the fact is, that I was continued in the command, but did not then receive nor have I yet received any more than I had on the former occasion of taking the French ships one word of official approbation.

All these discouraging circumstances, did not abate the zeal I felt, for the safety of my country; or disgust me with its service, or disturb my temper. On my return to Portsmouth I made no complaint, I did every thing to stifle discontent and to get forward for sea again without divulging the true situation of affairs, although I found myself in publications which are considered as countenanced by authority most grossly abused, and threatened with the fate of Admiral Byng.

I had returned to Portsmouth on the 27th of June, and on the ninth of July, finding my fleet made up to twenty four ships of the line of battle with four frigates and two fireships I sailed again in obedience to my instructions; trusting to such reinforcement as I was given to expect would join me at Plymouth, off the Lizard, and at sea, by several reinforcements of ships, manned as the exigency would permit, the fleet was made up to thirty sail of the line. After this, although I was much short of a proportionable number of frigates, and must naturally be subject to many inconveniencies from that want, I had on the whole no just cause for uneasiness. The greatest part of the ships were in good condition, and well appointed; and where any thing was wanting the zeal of the commanders abundantly supplied it.

The appearance of the French fleet confirmed the ideas upon which I had returned to Portsmouth, for on the 8th of July, the day before I left St. Helens, they sailed out of Brest thirty two sail of the line. On the 23d the fleets of the two nations first came in sight of each other I believe the French Admiral found me much stronger than he expected, and from thence he all along shewed, as I conceived a manifest disinclination to come to an engagement. I do not say this as meaning to call his courage in question, very far from it. I am certain that he is a man of great bravery but he might have many very reasonable motives, for avoiding a decisive action.

Many objects of the French, and those very important might be obtained without a battle. On my part I had every motive which could make me

earnest to bring it on, and I was resolved to do so whenever, and by whatever means I could.

I should be criminal indeed if I had not, for I had every motive for desiring to press on an action; the greatest body of the British trade was then on its return home. Two east India, and two west India fleets of immense value were hourly expected, from the course it was probable they would hold; and from the situation of the French fleet; they might be taken in my sight without a possibility of my preventing it. Besides this, I know that two fleets where one of them chuses to decline battle may be for a very long time near one another, without any means of bringing on an engagement.

I cannot be certain whether the account I have read be quite exact: but it should appear by that account, that in King William's reign, Admiral Ruffel continued for two months almost in the daily view of the French fleet without having it in his power to fight them; I do not think the thing at all impossible.

I had also other reasons for the greatest anxiety to bring on an engagement upon any terms that I could obtain it.

These reasons are weighty; and they are founded in my instructions, I gave notice to the Admiralty, that I might find it useful to my defence to produce those instructions on my trial. They communicated to me his majesty's pleasure thereupon, and informed me that they could not consent that my instructions should be laid before my council or be produced at the Court Martial. I was much surprised at this answer, as I conceived that those who were much better Judges than I could be of what was matter of state, could never have thought of putting me in a situation which might compel me in my defence to produce the instructions under which I acted, when at the same time they meant to refuse me the fair and natural means of my justification. It is my undoubted right, if I think proper, to avail myself of them. On former trials they have been generally sent down with the accusation, that the conduct of the Admiral might be compared with his instructions. But leaving the Admiralty to reflect on the propriety of their conduct; it is my part to take care of my own. I have always been willing to run any hazard for the benefit of the state; I shall not produce those instructions; I have not even shewed them to my council nor communicated their contents. But my declining to make use of my own rights, cannot in a like case hereafter affect the right of any other man,

The world will judge of the wisdom and equity of ordering trials under such circumstances.

On the 27th of July, I came to an action with the French, they were beaten, and obliged to retire into their own Port. No one can doubt but a commander in chief who is to reap the principal share of the Glory will be earnest to have his Victory as compleat as possible. *Mine did not* answer to my wishes nor to my just expectations. I was fully resolved to renew the engagement, why it was not renewed, will appear when I come to the particulars of the charge.

As to my conduct after the engagement I might have pursued a fruitless and a most hazardous chase of some few ships, (I know not to this hour with certainty what they were, nor does my accuser) if I had had my mind filled with notions unworthy of my station I might easily have paraded with my shattered fleet off the harbour of Brest. I chose rather to return to Plymouth with all expedition to put myself once more in a condition to meet the enemy and defend the kingdom. But on my return I took care to leave two men of war of the line on a cruize to protect the trade. By the vigilance of the commanders, and the happy effect of the late advantage, the expected fleets all came in safe.

At Plymouth I lost no time, and omitted no means of putting myself in a state fit for action.

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I did every thing to promote an unanimous exertion; and I found my endeavours well seconded by all the Admirals and Captains of the fleet. This benefit I acquired, by avoiding a retrospect into the conduct of the Vice-Admiral of the Blue; for if I had instituted an inquiry or trial, it would have suspended the operations of the whole fleet, and would have suspended them in the midst of the campaign, when every moment was precious, and the exertion of every officer necessary. The delay which the present Court-Martial has occasioned to the service, even at this time, is evident to all the world. How much more mischievous would it have been at that period? I was sensible of it, or rather to speak more correctly, my mind was so fully taken up with carrying on the great service, which was entrusted to my care, that I could not admit the thought of mispending my own time, and wasting the flower of the British navy, in attending on a Court-Martial.

My letter to the Admiralty was written in the spirit which directed my conduct at Plymouth. All my letters were written with the same spirit. My letter published in the Gazette, has been brought before this Court, for the purpose of convicting me of crimes, by the person whose faults it was intended to cover. He has attempted, very irregularly, in my opinion, to call upon witnesses for their construction of my writing. No one has a right to explain my meaning, where it may be doubtful, but myself; and it is you, Gentlemen, who are to judge whether my explanation is fair.

That letter (as far as it goes) is an account of the action strictly true. It is indeed very short, and very general, but it goes as far as I intended it should. It commends Sir Hugh Palliser; it does what I meant to do.

I meant to commend his bravery (or what appeared to me as such) in the engagement. As he stood high in command, to pass over one in his station, would be to mark him. It would have conveyed the censure I wished for such good reasons to avoid, and I should have defeated the one great object I had in view, the defence of the nation. In that letter I expressed also my hopes of bringing the French fleet to action in the morning.

I had such hopes; and my accuser, even in the second edition of his log-book shews, that I was not wholly ungrounded in my expectations, since he has recorded himself as of the same opinion. I said, that I did not interrupt the French fleet that evening in the formation of their line. I shall shew you by evidence (if it should not have already fully appeared) that I was not able to do it; and that any random firing from me under my circumstances, would have been vain against the enemy, and a disgraceful trifling with regard to myself.

You have seen my expressions, and such is their meaning with regard both to the French and Sir Hugh Palliser, so far as they applied to the particular times to which they severally belonged. But there was an *intermediate time* with regard to both, of which, when I wrote my letter, I gave no account. I intended to conceal it. I do not conceive that a commander in chief is bound to disclose to all Europe, in the midst of a critical service, the real state of his fleet, or his opinion of any of his officers.

He is not under such circumstances, bound to accuse a British Admiral. To me such an accusation, under almost any circumstances, is a very serious matter: whilst a possibility of an excuse for an officer remains in my mind, I am in my disposition ready to lay hold of it; and I confess to you, that until Sir Hugh Palliser himself had brought out to this Court all the particulars, I attributed much more to his misfortune, or mistake, than I now find myself authorized to do; nor did

I think his conduct half so exceptionable, as he himself has proved it.

After the engagement, he never thought fit to explain to me the reasons of his not bearing down into my wake, to enable me to renew the action, and I did not think fit to enquire into them.

I apprehend that a power of passing over faults or mistakes in service, (into which the very best officers may be surprized) to be sometimes as necessary, if not to discipline, yet to the end of all discipline, the good of the service, as any punishment of them can possibly be: and one of the ill effects of this prosecution will be, I fear, to terrify a commander in chief out of one of the most valuable parts of his discretion.

By using the discretion which I thought was in me, I preserved concord in the fleet, promptitude in the service, and dignity to the country. In my opinion, any complaint of such a magnitude would have produced infinite mischiefs.

Nobody can imagine, that in that moment, an accusation of a Vice Admiral, who was besides a Lord of the Admiralty, could be undertaken without a capital detriment to our naval operations, and even to the quiet of the public.

My letter was written solely upon the principles which I have now honestly and faithfully laid before you, and which I submit to your judgment. If I have been more indulgent than was wise, the public has had the benefit, and all the trouble and inconvenience of my indiscretion has fallen upon myself. I never had a more troublesome task of the sort, than in penning that letter, and it has ill answered my pains.

If I have not shewn myself able at concealment, it is a fault for which I hope I shall not lose much credit with this Court Martial; I shall not be very uneasy if I have been thought to have wrote a bad letter; if I shall be found, as I trust I shall be found, to have done my duty in fighting the enemy.

The intrusion of my letter into the trial, has made it necessary for me to explain it. I now proceed with the account of my conduct.

I got ready for sea again, with my usual temper and disposition, to accommodate; after this I kept the sea as long as I could. The French fleet carefully avoided my station. I could obtain no distinct intelligence of them, though I omitted no means to procure it.

In consequence of this, their desertion of the seas, their trade fell into the hands of our privateers, to a number and value that I believe was never equalled in the same space of time. His majesty was pleased to speak of it in his speech from the throne, and to attribute it to the good conduct of some of his officers.

When I considered this; when I considered the direct approbation of my conduct, and the circumstances which attended my appointment, it was with difficulty I persuaded myself that I was awake, when I found that I was treated as a criminal, and ordered, without the least ceremony, or previous enquiry, to be tried by a Court Martial, on the accusation of my officer, my old friend, one over whose faults I had so lately cast a veil; the very person who was the messenger and congratulator of my original appointment. I acknowledge it was for some time before I could sufficiently master my indignation, and compose myself to that equality of temper with which I came hither, and with which I have heard such shocking and reproachful matter and words read to my face, in the place of support I was made to look for. I feel very much inward peace at present, and the event I consider with much less concern for myself than for the service. Your judgment, I am fully persuaded, will be wise and well weighed, and such as will be of credit to yourselves, and of advantage and encouragement to that part of the

the military which is most interesting to this kingdom. On my part, I trust I shall intitle myself not only to an acquittal, but to an honourable reparation at your hands, for the malicious calumnies contained in the charge against me.

Thus much I have said as to the general matter which has arisen on the trial, and the circumstances by which that trial has been brought on, as well as to the motives and principles which regulated the discretion that I conceive was in me. If these motives were probable and likely to be real, I cannot be guilty of the criminal negligence and want of knowledge in my profession, with which I stand charged. As to the charges themselves, let the first article be read again, and I will answer to it.

Judge Advocate. First Article of the Charge.

THAT on the morning of the 27th of July, 1778, having a fleet of thirty ships of the line under his command, and being then in the presence of a French fleet of the like number of ships of the line; the said Admiral did not make the necessary preparations for fight; did not put his fleet into a line of battle, or into any order proper either for receiving or attacking an enemy of such force: but on the contrary, although his fleet was already dispersed and in disorder, he, by making the signal for several ships of the Vice Admiral of the Blue's division to chase to windward, increased the disorder of that part of his fleet, and the ships were in consequence more scattered than they had been before; and whilst in this disorder, he advanced to the enemy and made the signal for battle.

That the above conduct was the more unaccountable, as the enemy's fleet was not then in disorder, nor beaten, nor flying, but formed in a regular line of battle, on that tack which approached the British fleet, (all their motions plainly indicating a design to give battle) and they edged down and attacked it whilst in disorder. By this un-officer like conduct, a general engagement was not brought on, but the other Flag Officers and Captains were left to engage without order or regularity, from whence great confusion ensued, some of his ships were prevented getting into action at all, others were not near enough to the enemy, and some from the confusion fired into others of the King's ships, and did them considerable damage, and the Vice Admiral of the Blue was left alone to engage singly and unsupported. In these instances, the said Admiral Keppel negligently performed the duty imposed on him.

The Admiral. Mr. President, to this charge, I answer, that I have never understood preparations for fight, to have any other meaning in the language and understanding of seamen, than that each particular ship under the direction and discipline of her own officers, *when in pursuit of an enemy*, be in every respect cleared and in readiness for action; the contrary of which, no Admiral of a fleet, without reasonable cause will presume; and as from the morning of the 24th, when the French fleet had got to windward, to the time of the action, the British fleet was in unremitting pursuit of them, it is still more difficult to conceive, that any thing more is meant by this charge, than what is immediately after conveyed by the charge that follows it, namely,

"That on the same morning of the 27th, I
"did not put my fleet into a line of battle,
"or into any order, proper either for receiving or attacking an enemy of such
"force."

By this second part of the charge, I feel myself attacked in the exercise of that great and broad line of discretion, which every officer commanding ei-

ther fleets or armies, is often obliged, both in duty and conscience, to exercise to the best of his judgment, and which depending on circumstances and situations infinitely various, cannot be reduced to any positive rule of discipline or practice; a discretion which I will submit to the Court, I was particularly called upon by the strongest and best motives to exercise, and which, in my public letter to the Board of Admiralty, I openly avowed to have exercised. I admit, that on the morning of the 27th of July, I did not put my fleet into a line of battle, because I had it not in my choice to do so, consistent with the certainty, or even the probability of either giving, or being given battle; and because, if I had scrupulously adhered to that order, in which, if the election had been mine, I should have chosen to have received, or attacked a willing enemy, I should have had no enemy either to receive or to attack,

I shall therefore, in answer to this charge, submit to the Court, my reasons for determining to bring the French fleet to battle at all events, and shall shew that any other order than that in which my fleet was conducted, from my first seeing them, to the moment of the action, was incompatible with such determination.

And in order to this, I must call the attention of the court to a retrospective view of the motions of the two fleets, from their first coming in sight of each other.

On my first discovering the French fleet at one o'clock in the afternoon of the 23d of July, I made the necessary signals for forming my fleet in the order of battle, which I effected towards the evening, when I brought to, by signal, and lay till the morning, when perceiving that the French fleet had gained the wind during the night, and carried a pressed sail to preserve it, I discontinued the signal for the line, and made the general signal to chase to windward, in hopes that they would join battle with me, rather than suffer two of their capital ships to be entirely separated from them, and give me the chance of cutting off a third, which had carried away a topmast in the night, and which but for a shift of wind I must have taken. In this, however, I was disappointed, for they suffered two of them to go off altogether, and continued to make every use of the advantage of the wind.

This assiduous endeavour of the French Admiral to avoid coming to action, which from his thus having the wind was always in his option, led me to believe he expected a re-inforcement, a reflection which would alone have been sufficient to determine me to urge my pursuit in as collected a body as the nature of such a pursuit would admit of, without the delay of the line, and to seize the first opportunity of bringing on an engagement.

But I had other reasons no less urgent.

If by obstinately adhering to the line of battle, I had suffered, as I inevitably must, the French fleet to have separated from me, and if by such separation the English convoys from the East and West Indies, which I have already stated in the introduction to my defence to have been then expected home, had been cut off, or the coast of England had been insulted, what would have been my situation, sheltered under the forms of discipline, I perhaps might have escaped punishment, but I could not have escaped censure; I should neither have escaped the contempt of my fellow citizens, nor the reproaches of my own conscience.

Moved by these important considerations, supported by the examples of Admiral Russell, and other great naval commanders, who in similar situations had ever made strict order give way to reasonable enterprize, and particularly encouraged by the remembrance of having myself served under that truly great officer Lord Hawke, when reject-

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ing all rules and forms, he grasped at victory by an irregular attack; I determined not to lose sight of the French fleet by being outailed from preserving the line of battle, but to keep my fleet as well collected as I could, and near enough to assist and act with each other, in case a change of wind or other favourable circumstance should enable me to force the enemy to action.

Such were my feelings and resolutions when the day broke on the morning of the 27th of July, at which time the fleet under my command was in the following position: Vice Admiral Sir Robert Harland was about four miles distant on the Victory's weather quarter with most of the ships of his own division, and some of those belonging to the center; and Vice Admiral Sir Hugh Palliser at about three miles distance, a point before the lee beam of the Victory, with his mainmast up, which obliged the ships of his division to continue under an easy sail.

The French fleet was as much to windward, and at as great a distance as it had been the preceding morning, standing with a fresh wind close hauled on the larboard tack, to all appearance avoiding me with the same industry as ever.

At this time, therefore, I had no greater inducement to form the line, than I had on the morning of the former day, and I could not have formed it without greatly increasing my distance from the French fleet, contrary to that plan of operation which I have already submitted to the judgment of the court.

The Vice Admiral of the Blue next charges

"That although my fleet was already dispersed, and in disorder, I, by making the signal for several ships of his division to chase to windward, increased the disorder of that part of my fleet, and that the ships were in consequence more scattered than they had been before, and that whilst in this disorder, I advanced to the enemy, and made the signal for battle."

In this part of the charge, there is a studious design to mislead the understanding, and by leaving out times and intermediate events, to make the transactions of half a day appear but as one moment.

It is indeed impossible to read it without being possessed with the idea, that at half past five in the morning, when I made the signal for six of the ships of the Vice Admiral of the Blue's division to chase to windward, I was in the immediate prospect of closing with an enemy approaching me in a regular line, and all their motions plainly indicating a design to give battle; instead of which, both the fleets were then on the larboard tack, the enemy's fleet near three leagues to windward, going off close by the wind with a pressed sail, my reason therefore for making that signal at half past five, was to collect as many of the ships to windward as I could, in order to strengthen the main body of the fleet, in case I should be able to get to action, and to fill up the interval between the Victory and the Vice Admiral, which was occasioned by his being far to leeward, and it is plain that the Vice Admiral must have himself understood the object of the signal, since it has appeared in the course of the evidence that on its being made, the Formidable set her mainmast, and let the reefs out of her top sails, and indeed the only reason why it was not originally made for the whole division was, that they must have then chased as a division, which would have retarded the best going ships, by an attendance on the Vice Admiral.

Things were in this situation, when about nine o'clock, the French fleet wore and stood to the southward on the starboard tack, but the wind, immediately after they were about coming, more southerly, I continued to stand on till a quarter

past ten, at which time I tacked the British fleet together by signal, and soon after we were about, the wind came some points in our favour to the westward, which enabled us to lie up for a part of them; but in a dark squall that almost immediately came on, I lost sight of them for above half an hour, and when it cleared away at eleven o'clock, I discovered that the French fleet had changed their position, and were endeavouring to form the line on the larboard tack, which finding they could not effect without coming within gunshot of the van of the British fleet, they edged down and fired on my headmost ships, as they approached them on the contrary tack, at a quarter after eleven, which was instantly returned, and then, and not till then, I made the signal for battle—all this happened in about half an hour, and must have been owing to the enemy's falling to leeward in performing their evolution during the squall, which we could not see, and by that means produced this sudden and unexpected opportunity of engaging them, as they were near three leagues ahead of me when the squall came on.

If, therefore, by making the signal for the line of battle when the van of my fleet was thus suddenly getting within reach of the enemy, and well connected with the center, as my accuser himself has admitted, I had called back the Vice Admiral of the Red, the French fleet might either have formed their line complete, and have come down upon my fleet while in the confusion of getting into order of battle, or (what I had still greater reason to apprehend) might have gone off to windward out of my reach altogether; for even as it was, the enemy's van, instead of coming close to action, kept their wind, and passed hardly within random shot.

My accuser next asserts as an aggravation of his former charge

"That the French fleet was in a regular line, on the tack which approached the British fleet, all their motions plainly indicating a design to give battle."

Both which facts have already been contradicted, by the testimony of even his own witnesses: that the enemy's fleet was not in a regular line of battle, appeared by the French Admiral being out of his station, far from the center of his line, and next or very near to a ship carrying a Vice Admiral's flag; and from some of their ships being abreast of each other, and in one as they passed the English fleet, with other apparent marks of irregularity: Indeed every motion of the French fleet from about nine, when it went on the starboard tack, till the moment of the action, and even during the action itself, I apprehend to be decisive against the alledged indication of designing battle: for, if the French Admiral had really designed to come to action, I apprehend he never would have got his fleet on the contrary tack, to that on which the British fleet was coming up to him, but would have shortened sail, and waited for it, formed in the line on the same tack, and even when he did tack towards the British fleet, the alledged indication is again directly refuted, by the van of the French fleet hauling their wind again, instead of bearing down into action, and by their hoisting no colours when they began to engage.

Notwithstanding these incontrovertible truths, my accuser imputes it to me, that a general engagement was not brought on, but it is evident from the testimony of every witness he has called, that a general engagement was never in my choice; and that so far from its being prevented by my not having formed the line of battle, no engagement, either general or partial, could have been brought on, if I had formed it: Indeed, it is a contradiction in terms, to speak of a general engagement, where the fleet that has the wind, tacks to pass the fleet to leeward, on the contrary tack.

Such

Such was the manner, in which after four days pursuit, I was at last enabled, by a favourable shift of wind, to close with the fleet of France.

And if I am justifiable on principle, in the exercise of that discretion, which I have been submitting to your judgment, of bringing at all events, an unwilling enemy to battle, I am certainly not called upon to defend to all the minutiae of consequences resulting from such enterprize; even if such had ensued, as my accuser has asserted, but which his own witnesses have not only failed to establish, but absolutely refuted: It would be an insult on the understanding of the Court, were I to offer any arguments to shew, that ships which engage without a line of battle, cannot so closely, uniformly and mutually support each other, as when circumstances admit of a line being formed; because it is self-evident, and is the basis of all the discipline and practice of lines of battle: But, in the present case, notwithstanding I had no choice in making any disposition for an attack, nor any possibility of getting to battle otherwise than I did, which would be alone sufficient to repel any charge of consequent irregularity, or even confusion, yet it is not necessary for me to claim the protection of the circumstances under which I acted; because no irregularity or confusion, either existed or has been proved; all the chasing ships, and the whole fleet, except a ship or two, got into battle, and into as close battle as the French fleet, which had the option by being to windward, chose to give them.

The Vice Admiral of the Blue himself, though in the rear, was out of action in a short time after the Victory; and so far from being left to engage singly and unsupported, was passed during the action, by three ships of his own division, and was obliged to back his mizen top-sail to keep out of the fire of one of the largest ships in the fleet, which must have continued near him all the rest of the time he was passing the French Line, as I shall prove she was within three cables length of the Formidable, when the firing ceased. Please to read the next Article.

Judge Advocate. The second Article of the Charge is "That after the van and center divisions of the British fleet passed the rear of the enemy, the Admiral did not immediately tack and double upon the enemy with those two divisions, and continue the battle; nor did he collect them together at that time, and keep so near the enemy as to be in readiness to renew the battle, as soon as it might be proper; but, on the contrary, he stood away beyond the enemy to a great distance before he wore to stand towards them again, leaving the Vice Admiral of the Blue engaged with the enemy, and exposed to be cut off."

The Admiral. Sir, In answer to this Article, The moment the Victory had passed the enemy's rear, my first object was to look round to the position of the fleet, which the smoke had till then obscured from observation, in order to determine how a general engagement might best be brought on after the fleets should have passed each other. I found that the Vice Admiral of the Red with part of his division had tacked, and was standing towards the enemy with top-gallant sails set, the very thing I am charged with not having directed him to do; but all the rest of the ships that had got out of action were still on the starboard tack, some of them dropping to leeward, and seemingly employed in repairing their damages:—The Victory herself was in no condition to tack, and I could not immediately wear and stand back on the ships coming up a-stern of me out of the action (had it been otherwise expedient) without throwing them into the utmost confusion.—Sir John Ross, who very gallantly

tried the experiment, having informed the Court of the momentary necessity he was under of wearing back again to prevent the consequences I have mentioned, makes it unnecessary to enlarge on the probable effect of such a general manoeuvre with all the ships a-head. Indeed, I only remark it as a strongly relative circumstance, appearing by the evidence of a very able and experienced officer, and by no means as a justification for having stood away to a great distance beyond the enemy before I wore, because the charge itself is grossly false in fact.

The Victory had very little way while her head was to the southward, and although her damages were considerable, was the first ship of the center division that got round towards the enemy again, and some time before the rest were able to follow her; since even as it was, not above three or four were able to close up with her on the larboard tack; so that had it even been practicable to have wore sooner than I did, no good purpose could have been answered by it, since I must only have wore the sooner back again, to have collected the disabled ships, which would have been thereby left still farther a-stern.

The Formidable was no otherwise left engaged with the enemy during this short interval, than as being in the rear, which must always necessarily happen to ships in that situation, when fleets engage each other on contrary tacks, and no one witness has attempted to speak to the danger my accuser complains of, except his own Captain, who, on being called upon to fix the time when such danger was apprehended, stated it to be before the Formidable opened her fire,—which renders the application of it as a consequence of the second charge too absurd to demand a refutation. Now please to read the third, Sir.

Judge Advocate. The third Article of the Charge is "That after the Vice Admiral of the Blue had passed the last of the enemy's ships, and immediately wore and laid his own ship's head towards the enemy again, being then in their wake, and at a little distance only, and expecting the Admiral to advance with all the ships to renew the fight; the Admiral did not advance for that purpose, but shortened sail, hauled down the signal for battle, nor did he at that time, or at any other time, whilst standing towards the enemy, call the ships together in order to renew the attack, as he might have done, particularly the Vice Admiral of the Red and his division, which had received the least damage, had been the longest out of action, were ready and fit to renew it, were then to windward, and could have bore down and fetched any part of the French fleet, if the signal for battle had not been hauled down; or if the said Admiral Keppel had availed himself of the signal appointed by the thirty-first article of the fighting instructions, by which he might have ordered those to lead, who are to lead with the starboard tacks on board by a wind, which signal was applicable to the occasion for renewing the engagement with advantage after the French fleet had been beaten, their line broken and in disorder.—In these instances he did not do the utmost in his power to take, sink, burn or destroy the French fleet, that had attacked the British fleet."

The Admiral. Sir, As soon as I had wore to stand towards the enemy, I hauled down the signal for battle, which I judged improper to be kept abroad till the ships could recover their stations, or at least get near enough to support each other in action; and in order to call them together for that purpose, I immediately made the signal to form the line of battle a-head, a cable's length

afunder, and the Victory being at this time a-head of all the center and Red division, I embraced that opportunity of unbending her maintop-sail which was totally unserviceable, and in doing which the utmost expedition was used, the ships a-stern of me doing all they could in the mean time to get into their stations, so that no time was lost by this necessary operation.

The Formidable was a-head of the Victory during this period it was her station in the line, on that tack, yet at the very moment my accuser dares to charge me with not calling the ships together to renew the attack,—he himself, though his ship was in a manageable condition, as has appeared by the evidence of his own Captain,—and though he had wore, expecting (as he says) the battle to be renewed, quitted his station in the front of that line of battle, the signal for which was flying, passed to leeward of me on the starboard tack, while I was advancing to the enemy, and never came into the line during the rest of the day.

In this situation I judged it necessary that the Vice Admiral of the Red, who was to windward, and pushing forward on my weather-bow with six or seven ships of his division, should lead on the larboard tack, in order to give time to the ships which had come last out of action, to repair their damages and get collected together, and the signal appointed by the thirty-first article of the fighting instructions not being applicable, as the French fleet was so nearly a-head of us, that by keeping close to the wind we could only have fetched them, I made the Proserpine's signal, in order to have dispatched Captain Sutton with a message to Vice Admiral Sir Robert Harland, to lead the fleet on the larboard tack; but before he had left the Victory with the orders he had received, the French fleet wore and stood to the southward, forming their line on the starboard tack, their ships advancing regularly out of a collected body, which they had got into from the operation of wearing, and not from any disorder or confusion; though had such disorder or confusion really existed, I could have derived no immediate advantage from it, not having a sufficient force collected to prevent their forming by an attempt to renew the attack. The Victory was at this time the nearest ship to the enemy, with no more than three or four of the center division in any situation to have supported her, or each other in action; the Vice Admiral of the Blue was on the starboard tack, standing away from his station, totally regardless of the signal that was flying to form the line; and most of the other ships, except the Red division, whose position I have already stated, were far a-stern, and five disabled ships at a great distance on the lee quarter.

Most of these facts are already established by my accuser's own evidence, and I shall prove and confirm them all by the testimony of that part of the fleet, whose situations will enable them to speak to them with certainty.

I trust they will convince the Court, that I had it not in my power to collect the fleet together to renew the fight at that time, and that from their not being able to follow me, I consequently could not advance with them; that I did not shorten sail, but only shifted an unserviceable one when I was far a-head, and the ships unable to follow; that I did not haul down the signal for battle till it ceased to be capable of producing any good effect; that during the whole time I stood towards the enemy, I endeavoured by the most forcible of all signals, the signal for the line of battle, to call the ships together, in order to renew the attack; that I did avail myself of the ships that were with the Vice Admiral of the Red, as far as circumstances admitted; and that

I therefore did do the utmost in my power to take, sink, burn, and destroy the French fleet, which had attacked the British fleet. Read the fourth Article if you please.

Judge Advocate. The fourth Article of the Charge is "That, instead of advancing to renew the engagement as in the preceeding articles is alledged, and as he might and ought to have done, the Admiral wore and made sail directly from the enemy, and thus he led the whole British fleet away from them, which gave them the opportunity to rally unmolested, and to form again into a line of battle, and to stand after the British fleet."

"This was disgraceful to the British flag; for it had the appearance of a flight, and gave the French Admiral a pretence to claim the victory, and to publish to the world that the British fleet ran away, and that he pursued it with the fleet of France, and offered it battle."

The Admiral. Sir, The French fleet having wore, and began to form their line on the starboard tack by the wind, which if they had kept would have brought them close up with the center division, soon afterwards edged away, pointing towards four or five of the disabled ships, which were at a distance to leeward, and with evident intention to have separated them from the rest of the fleet; to prevent which, I made the signal to wear, and stood athwart their van in a diagonal course to give protection to these crippled ships, keeping the signal for the line flying to form and collect the fleet on the starboard tack: And as I had thus been obliged to alter my disposition before Captain Sutton left the Victory with my former message, I dispatched him with orders to the Vice Admiral of the Red, to form with his division at a distance a-stern of the Victory, to cover the rear, and to keep the enemy in check till the Vice Admiral of the Blue should come into his station with his division, in obedience to the signal. These orders the Vice Admiral of the Red instantly obeyed, and was formed in my wake before four o'clock; when finding that while by the course I steered to protect the crippled ships, I was nearing the enemy, the Vice Admiral of the Blue still continued to lie to windward, and by so doing kept his division from joining me, I made the signal for ships to windward to bear down into my wake; and that it might be the better distinguished (both being signals at the mizen peak) I hauled down the signal for the line for about ten minutes, and then hoisted it again. This signal for ships to windward to bear down he repeated, though he had not repeated that for the line of battle; but by not bearing down himself, he led the ships of his division to interpret his repeating it as requiring them to come into his wake instead of mine.

Having now accomplished the protection of the disabled ships, and the French fleet continuing to form their line, ranging up to leeward parallel to the center division, my only object was to form mine, in order to bear down upon them to renew the battle: And therefore, at a quarter before five, after having repeated the signal for ships to windward to bear down into my wake with no better effect than before, I sent the Milford, with orders to the Vice Admiral of the Red to stretch a-head and take his station in the line, which he instantly obeyed; and the Vice Admiral of the Blue being still to windward, with his fore topsail unbent, and making no visible effort to obey the signal, which had been flying the whole afternoon, I sent the Fox at five o'clock with orders to him to bear down into my wake, and to tell him that I only waited for him and his division to renew the battle; and while I was dispatching these frigates, having before

before hauled down the signal to come into my wake, I put abroad the signal for all ships to come into their stations, always keeping the signal for the line flying. All this producing no effect on the Vice Admiral of the Blue, and wearied out with fruitless expectation, at seven o'clock I made the signal for each particular ship of the Vice Admiral of the Blue's division to come into her station; but before they had accomplished it, night put an end to all further operations.

It may be observed that amongst these signals I did not make the Formidable's—if the Vice Admiral chuses to consider this as a culpable neglect, I can only say that it occurred to me, to treat him with a delicacy due to his rank, which had some time before induced me to send him the message by Captain Windsor; the particulars of which he has already faithfully related to the Court.

I trust I have little reason to apprehend that you will be inclined to consider my conduct as I have stated it, in answer to this fourth Article of the charge, as disgraceful to the British flag! After I had wore upon the same tack with the enemy, to protect the disabled part of my fleet, and to collect the rest together, there would have been little to do to renew the battle, but bearing right down upon the enemy, if my accuser had led down his division in obedience to the repeated signals and orders which I have stated. The Victory never went more than two knots, was under her double reefed topsails and foresail, much shattered, which kept the ships that were near her under their topsails, and suffered the French fleet, which might always have brought me to action, if they had inclined to do it, to range up parallel with the center under very little sail: And it was to protect the five disabled ships above-mentioned, and to give the rest time to form into some order, that I judged it more expedient to stand as I did, under that easy sail, than to bring to, with my head to the southward. The Court will judge whether it was possible for any officer in the service really to believe that these operations could give the appearance of a flight, or furnish a rational pretence to the French Admiral to claim the victory, or publish to the world that the British fleet had run away. Please to read the next Article.

Judge Advocate. The fifth Article of the Charge is, "That in the morning of the 28th of July, 1778, when it was perceived that only three of the French fleet remained near the British in the situation the whole had been in the night before, and that the rest were to leeward at a greater distance, not in a line of battle, but in a heap, the Admiral did not cause the fleet to pursue the flying enemy, nor even to chase the three ships that fled after the rest; but, on the contrary, he led the British fleet another way, directly from the enemy."

"By these instances of misconduct and neglect a glorious opportunity was lost of doing a most essential service to the State, and the honour of the British navy was tarnished."

The Admiral. Sir, On the morning of the 28th of July, the French fleet (except three sail, which were seen on the lee-quarter) was only visible from the mast heads of some of the ships of the British fleet, and at a distance from me, which afforded not the smallest prospect of coming up with them, more especially as their ships, though certainly much damaged in their hulls, had not apparently suffered much in their masts and sails; whereas the fleet under my command was generally and greatly shattered in

their masts, yards, and rigging, and many of them unable to carry sail; as to the three French ships, I made the signal at five o'clock in the morning for the Duke, Bienfaitant, Prince George, and Elizabeth, to give them chase, judging them to be the properest ships for that purpose; but the two last were not able to carry sufficient sail to give even countenance to the pursuit; and looking round to the general condition of my fleet, I saw it was in vain to attempt either a general or a partial chase. Indeed, my accuser does not venture to alledge that there was any probability, or even possibility, of doing it with effect, which destroys the whole imputation of his charge.

Under these circumstances I trust I could not mistake my duty; and I was resolved, as I have already before observed in the introduction to my defence, not to sacrifice it to an empty show and appearance, which is beneath the dignity of an officer, unconscious of any failure or neglect. To have urged a fruitless pursuit with a fleet so greatly crippled in its masts and sails, after a distant and flying enemy, within reach of their own ports, and with a fresh wind blowing fair for their port, with a large swell, would have been not only wantonly exposing the British fleet under my command without end or object, but misleading and defeating its operations, by delaying the refitment necessary for carrying on the future service with vigour and effect.

My accuser asserts, by a general conclusion, to the five articles exhibited against me, that from what he states as instances of misconduct and neglect in me, a glorious opportunity was lost of doing a most essential service to the State, and that the honour of the British navy was tarnished.

The truth of the assertion, that an opportunity was lost, I am not called upon either to combat or deny; it is sufficient for me, if I shall be successful in proving that, that opportunity was seized by me, and followed up to the full extent of my power; if the Court shall be of that opinion, I am satisfied; and it will then rest with the Vice Admiral of the Blue to explain to what cause it is to be referred, that the glorious opportunity he speaks of was lost, and to whom it is to be imputed (if the fact be true) that the honour of the British navy has been tarnished.

Having now offered to the Court precise answers to all the charges exhibited against me, I shall proceed to call my witnesses to support those answers, and of course to refute the charges in the order in which they have been made. I shall call them not as a prisoner commonly calls his witnesses, to oppose them to those which appear for the prosecution—Quite the contrary—I bring them to support, confirm, enlarge, and illustrate almost the body of the evidence which has been given by my accuser.

But, before I sit down, I must discharge a duty which I feel myself to owe to the reputation of a service highly and justly favoured in this country, and which can never suffer in its honour, but the nation itself will suffer in proportion.

I have heard it asserted, and contended for during this trial, as an essential and indispensable right of a Captain of a man of war, to make additions and alterations in the ship's log-book, even after the original entries had been seen, examined, and approved by himself. I have seen this attempted to be excused, nay, even justified and boasted of in a case where the alterations and additions introduced matter of criminal and capital offence, acknowledged by the party to have been introduced months after the original entries were inserted; and with knowledge that a criminal charge had then been exhibited against the person in whose trial they were first heard of. I have heard
this

this attempted to be defended where the most material of the alterations and additions were certainly not supported by fact.

Upon this occasion, surely, I am called upon to enter my protest against a claim which subjects the log books of the King's ships, that ought to contain, if not always a perfect, yet always a genuine narrative of their transactions, when the events are fresh and recent, when they cannot be mistaken, and can hardly be misrepresented, and which ought never to be altered after the entries have been made and authorized.

This is the case of the first alteration of the log-book—Another alteration has since appeared in another log-book! that of the prosecutor himself! little differing from the former, except that the person that has actually made it does not appear to justify it; that the witness to it states it to have been made soon after the engagement, and that the destruction of some leaves, and substitution of others, seems to be rather made for the purpose of exculpating another person than of criminating me. But whatever the intention was, the thing is equally unjustifiable in all respects. It tends equally to destroy all sort of use in these kind of records, and to render them highly fallacious, and possibly highly dangerous. I do not dwell on all the particulars of that unhappy business!—It is painful to me, and the nature of the transaction is but too visible. There has always been, and probably will always be, something slovenly in these books, and the Masters have thought they have more power over them than is proper. There is, however, a great difference between inaccuracy and malicious design. There is a difference between the correction or supply of indifferent matters, and the cancelling of pages, and putting in others;—omitting, adding to, and varying the most important things for the most important purposes.

It is also proper for me to state two or three facts to the Court, in order to place the conduct of my accuser in its proper point of view.

I admit that the charges he has exhibited against me are very heinous.—They express misconduct and negligence; they imply (and so the Court has understood them to imply) cowardice also. If I ever committed them at all, it was in his presence, and in the presence of a numerous corps of officers, who being called upon by the Court, have all unanimously refused, or I trust will refuse to fix any one charge upon me. I have mentioned before the circumstance of my accuser's silence for months, during which he was called upon by the duty he owed to his country to have stated my misconduct, if any such had existed; and his refusal to do so is strong evidence of itself, that even in his opinion my conduct was liable to no reproach.

But this is not all; even so late as the 5th of October last, I received a letter from him, dated at sea, conceived in terms of great good will and respect for me; in which, having occasion to mention some prizes, which had been taken by the fleet, he considers *that* as a subject of little moment to me, assigning *this* as a reason, "For I know you had rather meet the French fleet,"—That fleet which he says I fled from!

Is this consistent with the tenor of those charges?—Could the man who wrote the one believe the other?—It is absolutely impossible.—I cannot produce this letter in evidence; but when I go out of the Court, I will shew it to any Gentleman who is desirous to see it*.

Another thing more, and I have done.

Sir Hugh Palliser thought proper to address the public by a printed newspaper, dated the 4th of November, principally, as it seems, for the sake of asserting that he was not, and insinuating that *I was*, the cause of the French fleet not being re-attacked in the afternoon of the 27th of July.

In that paper he positively denies that he received any message by Captain Windfor saying a word about renewing the attack, and he calls the contrary assertion a false one.—Captain Windfor has been called, and he has proved, that at five o'clock he received from me, and at about half past five he delivered to Sir Hugh Palliser himself the message to come with the ships of his division into my wake, and that I only waited for him to renew the attack.

This account of Captain Windfor has been attempted to be discredited by the prosecutor, who has asked Captain Bazely, and I believe one or two more, whether it was not at a later hour than Captain Windfor named.—I shall for that reason call witnesses to confirm Captain Windfor in all the circumstances of his testimony.

I owe it to him, as an honourable man, to shew that his evidence is correctly true.

I will prove that the message sent by me, was precisely the message delivered by him at the time he speaks to, and that it was exactly repeated by him to the Vice Admiral—yet after his own ears had heard, at half past five in the afternoon of a summer's day, that I waited only for him and his division to renew the attack, this gentleman applies to me, ignorant, negligent, cowardly, as he now represents me, to certify his good behaviour, and to support his character against the malice of his enemies.

He applies to me to sign a paper, containing many particulars directly contrary to the evidence you have heard upon oath, and which I will also shew to any one†.

At present I have only to do with one of those particulars. That paper (concurring with his attempts in this trial) contains this assertion, "That the calling his, and Vice Admiral Sir Robert Harland's divisions, into my wake, in the evening, was not for the purpose of renewing the battle at that time, but to be in readiness for it in the morning." This my accuser had the confidence to tender to me to sign.

To sign an assertion of a fact absolutely unfounded; the contrary of which I know to be true, and the contrary of which Captain Windfor has proved, and my accuser knew to be true.

How that gentleman felt when this came out I know not; but if I could conceive myself in the same situation, I know that it would be difficult to express what I should feel. *I cannot wish so heavy a punishment to my worst enemy.*

* See this letter in the Appendix.

† See this paper in the Appendix.

The Twenty-second Day's Proceedings, Feb. 1, 1779.

Sir ROBERT HARLAND, Vice Admiral of the Red, sworn.

The Admiral. I would ask Sir Robert Harland what day was the French fleet first discovered?

A. On the 24th; by sea reckoning it was after twelve o'clock.

Q. Were they seen the next day?

A. They were seen the next day, from the Queen, at noon.

Q. Were they to windward or to leeward of the English fleet then?

A. To windward of the English fleet.

Q. I would ask Sir Robert Harland, if the French fleet had it in their power to come to action that day, the 25th and 26th?

A. The French had it in their power to come to action that day, the 25th and 26th.

Q. Did I pursue them with a preft sail till I got to action, conformable to the going of the worst sailing ships?

A. You pursued them with a preft-up sail till you got up with them.

Q. If you had commanded an English fleet of the same number of ships, in the situation the French was with respect to the English, should you have hesitated one moment in bearing down and bringing them to action on account of the weather?

A. Not a moment.

Q. If I had pursued in a line of battle, could I have preserved my nearness to the French fleet?

A. I think not.

Q. Did you see the French fleet on the 27th in the morning?

A. Yes, I saw them.

Q. On what tack?

A. The larboard tack, when the day broke.

Q. On what tack was the English fleet at that time?

A. Upon the same tack.

Q. Did the French fleet on the larboard tack, or when got upon the starboard tack, shew any more intention to come to action than on the preceding day?

A. If this question means when the French were first upon the larboard tack, till eight o'clock, and afterwards on the starboard tack, till they changed again upon the larboard:

Q. Yes.

A. They shewed no more disposition or inclination to engage, than they had done on the preceding days.

Q. If at the time they got on the starboard tack I had formed my line of battle, would it not have deprived me of the power of getting to action on that day?

A. If you had formed a line of battle, and continued in it, you could not have brought the fleet to action that day, unless the French had come to you.

Q. Was there ever, during the course of that time that the French was on the starboard tack, a dark squall that obscured them from our sight?

A. They were obscured frequently; that morning they were obscured near an hour from black clouds and bad weather.

Q. At what time did your firing begin between the British and French ships?

A. Between eleven and twelve o'clock.

Q. Upon what tack were the French then?

A. On the larboard tack.

Q. Was not the center and rear of the French fleet in a confused appearance, when the firing did begin, in passing them?

A. In passing them the van of the French fleet were not well connected with the center, nor the center with the rear, as to distance or direction; and though there were six or eight ships; but I rather think there were but six (upon my memory) that

had got up close together, and had formed in a body out of their center; there were two flags I observed with them, six ships that had the appearance of confusion, which had a confused appearance. It is very unusual to have two flags in six or eight ships; but they were in a close connected body.

Q. Did not the French begin their firing at your ship at a very great distance?

A. The French, when they began their firing with respect to the Queen, it was at a great distance.

Q. I would ask Sir Robert a question as a flag-officer: If I had ordered ships by signal, of your division, to chase to windward, and after that signal, I became engaged in the ships where my flag was, by which I could not direct distant ships: I ask you Sir, if you should have thought yourself warranted to have ordered those ships to you, if you had judged it for the general service to have done so that moment?

A. I should have been happy in assisting and rendering any service to the fleet while I had any command in it; the occasion, as it is stated in the question, I think would have been sufficient for me to have done it.

Q. After you had passed the rear of the French fleet, did you observe the Formidable before she was out of the fire?

A. I do not recollect seeing the Formidable, after the fleet tacked in the morning, but twice that day to make any observations upon it: The first time was when she was coming out of her cannonade; and the second was when I passed her to leeward; I left her upon my weather-beam in going down to form in your rear; those were the times that I observed the Formidable, and no other, at the extreme ends of the fleet, which accounts for it.

Q. At the time you did observe the Formidable coming out of the fire of the rear of the French fleet, did there appear to you the smallest danger of the Vice-Admiral of the Blue being cut off?

A. There did not appear to me the smallest intention in the French to cut her off.

Q. After you was out of the action, and got upon the larboard tack, and leading upon the Victory's weather-bow, the Victory upon the larboard tack also, how many ships of your division were connected with you?

A. At most, seven.

Q. How many points of the compass was your division to windward of the French fleet, or how did you lay up for the French fleet?

A. To answer that question the precise time must be named. But I will answer it first to you; I fancy it will answer the question sufficiently: They were upon my lee-bow, and a-head withal of me when I was on that tack.

Q. If I had directed you to lead upon the enemy, did it appear to you that I had ships with me in a line or connected, so as to have given you proper security in re-attacking the French fleet, in the appearance they then made?

A. Most certainly, and most truly you had not.

Q. Did you observe the French fleet while you was on the larboard tack, draw out of the body of their fleet, and begin forming their line on the starboard tack?

A. I did.

Q. Did the French, before their drawing out upon the starboard tack, appear to you disordered; or were they in a close body?

A. They were not in a regular line as to distance, and therefore not in a close body.

Q. Was there, at that time, a confused appearance, or only a natural appearance from the changing positions?

A. It did not appear to me to have any confusion in it, but a well-regulated manœuvre.

M m

Q. I am

Q. I am speaking of the French fleet.

A. I am speaking of the French fleet.

Q. Under the circumstances and situation you have observed the English fleet to be in, was it in my power, as an officer, to have prevented the French forming their line on the starboard tack?

A. It was no more in your power to have done that, than it was to have collected your ships to have done it with.

Q. What would have been the probable consequence of orders to you, at that time to attack them?

A. I should have obeyed, and the French would have deserved to have been hanged if they had not taken me, and the ships of my division.

Q. Do you recollect, Sir Robert, at what time I wore from the larboard tack to the starboard tack; what hour of the day?

A. Two o'clock by my recollection.

Q. Did I immediately (after that you saw me) endeavour to get my line formed?

A. You certainly did.

Q. Did you receive any orders from me by the Proterprine after the fleet wore to the southward?

A. I did.

Q. What were they?

A. To form with my division a-stern of the Victory.

Q. If you had not received such orders, did you see reason to have put yourself in the situation at your own risk, for a moment, as an officer I mean?

A. Before I received those orders, I saw the necessity there was for my taking that post with my division, without loss of time; and was doing it at my own risk.

Q. What was your inducement?

A. Seeing the Commander in Chief unsupported within the power of the whole French force that was a-stern of him.

Q. If the Vice-Admiral of the Blue, while you was with your division in the Victory's rear, had bore down with his division to have taken his station there, should not you have thought yourself justified to have immediately made sail a-head even before orders could have reached you?

A. I should have wished to have received those orders if they could have come to me; but if it was plain I could not have received them, the same reason I have given for going into the rear of the fleet, would have carried me to the van of the fleet for the service of the whole, if I saw the Vice-Admiral with his division was standing to the rear: In short, I have no disguise in the matter, any thing I could have done, I should have done for the service of the whole.

Q. At what time did you receive orders from me by the Milford, in the afternoon, to go into your proper station?

A. After five o'clock.

Q. What was the situation of the French fleet, and appearance at that time?

A. They had formed as far as I could see them, and was leading their line on the southward.

Q. Was the signal for line of battle in the afternoon flying on board the Victory from the time of my being upon the starboard tack to dark, except a short time that it was hauled down to shew plainer the signals for battle?

A. It was.

Q. Had the British fleet standing to the southward, upon the same tack the French fleet were upon, and both forming their line, under the sail carried by the Victory, the appearance of a fight?

A. O fie! No.

Q. Were we then avoiding the French fleet, or were we then executing a proper manœuvre to form our line upon the same tack; and by that means, when executed, to bring on a general and decisive engagement?

A. You was using every means to collect your force, and to form your line of battle; and after you had done so, I make no doubt you would have brought on a general and decisive action if you could.

Q. Did I lose any favourable opportunity of re-attacking the French fleet in the afternoon while there was day enough to have done it properly?

A. If I have not said it before, I say it now; that you never had the means of doing it.

Q. When you passed the Victory to go a-head into your station, did you pass to windward or to leeward of her?

A. I passed the Victory to windward.

Q. At what distance do you recollect?

A. About a mile.

Q. Did you observe the sail the Victory was under during the afternoon?

A. I must have observed it at the time; and as well as I recollect of it now, she was sometimes under her top-sails, and sometimes under her top-sails and fore-sails, and her top-sails might be reefed.

Q. Do you recollect, Sir, what sail you carried on board the Queen during the night to preserve your station?

A. Sometimes our top-sails, and sometimes our top-sail and fore-sail, and top-sail two reefs.

Q. Did you carry your distinguishing lights all night?

A. I always carried my distinguishing lights in the night.

Q. Were the Victory's at her bow-sprit end seen from the Queen all night?

A. Do you mean on the night of the 27th?

Q. The night of the 27th?

A. The Victory carried a very good light at her bow-sprit end; I saw it myself frequently that night.

Q. Do you recollect at what rate you went all night?

A. To the best of my recollection under two knots, sometimes less, but never reached to three.

Q. Upon the 28th in the morning, did it not appear that the French had ran off in the night?

A. The French made their escape in the night.

Q. On the 28th, in the morning, were the French fleet seen from the Queen's mast-head?

A. They were steering to the S. E.

Q. Could it be discerned what sail they were making?

A. They were at too great a distance for that, sometimes they were seen, sometimes they were not; we only caught a sight of them twice I think.

Q. If I had attempted the pursuit of them with the wind and weather as it was then, was there the least probability of getting up with them before their reaching the port of Brest, conditioned as the British fleet was after the action?

A. I think not.

Q. You have heard all the articles of the charge read; I must desire you will state to the Court any instance (if you saw or know of any such) in which I negligently performed any part of my duty on the 27th or 28th of July.

A. I know of none, and therefore I cannot state any.

No cross examination.

Mr. MOORE, Purser of the Victory, sworn.

The Admiral Q. Mr. Moore, did I not appoint you to be near my person, and to take minutes and observations for my use?

A. You did, Sir.

Q. Do you recollect the relative position of the three divisions of the British fleet, with respect to each other, on the morning of the 27th?

A. At

A. At half an hour after five, in the morning of the 27th of July, the Vice-Admiral of the Red, with most of the ships of his division, some of the ships of the center division also, was from three to four miles to windward of the Victory, from a little before the beam to the quarter; the Vice-Admiral of the Blue, with the ships of his division, was from three to four miles to leeward of the Victory, from the beam to about the chest-tree; one of the ships or two might be before the chest-tree; the remainder of the ships of the center division, were about the Victory. In speaking of the rear division, I must except the Ocean, she was farther a-stern; she was upon the quarter, and all the ships of that division but her, I believe, had their main-sails up.

Q. Does Mr. Moore recollect what sail the Vice-Admiral of the Blue had?

A. The Vice-Admiral of the Blue's main-sail was up; the Formidable's main-sail was up?

Q. What was the position of the French Admiral with respect to the Victory, the Victory in the center of the British fleet?

A. The French Admiral was rather afore the beam of the Victory, nearly in the center of his own fleet, which was in much the same order of battle as they had been upon the preceding morning; they were about nine or ten miles to windward of us: The French fleet were in general under their top-sails and courses at that time.

Q. Did you see a signal made by the Victory that morning, for ships of the Vice-Admiral of the Blue's division to chase to windward, and at what time.—The witness held a small book in his hand.

The Admiral. Mr. Moore, that minute-book, I believe, will be necessary for you to look at; acquaint the Court what it is: When did you write it?

A. I beg permission of the Court to make use of my minutes for this purpose in particular; they were the minutes I took in pursuance of the orders I received from Admiral Keppel to be attentive to signals, which I kept from the first seeing the French fleet, till Tuesday morning, and they are as they were written upon that day, and this is the book.

The Judge Advocate. Read the last question, "Did you see, &c."

A. At half an hour after five, signals were made for the Shrewsbury, Robuste, Egmont, America, Terrible, Elizabeth, Defiance, and Worcester, to chase to windward.

Q. What appeared to you to be the intention of that signal?

A. Most of the ships of the center division were to windward of the Victory; there was a large space between the Vice of the Blue's division, and the leewardmost ships of the center; and I apprehend that it was meant to bring up the best sailing ships of the Vice-Admiral of the Blue's division to support the center, in case the French would permit us to bring on the action.

Q. At the time the signal was made, was there any greater indication of the French intending to fight, than on the preceding days?

A. none; they were close hauled, carrying as much sail as their worst going ships could keep up with them under: They were on the larboard-tack at that time.

Q. Did you observe the French fleet changing their position any time in the morning of the 27th of July, between the hours of eight and ten o'clock?

A. When I speak of the French fleet altering their positions at any time, I mean to speak to the French Admiral, as my observation was particularly to him, and the extremes of his fleet were, perpetually some one or other of them, either wearing or tacking to get into their stations. At half past nine the French Admiral tacked; most of his fleet were about before him that morning,

and continuing together the same sail as they had on the larboard-tack.

Q. At what hour did the British fleet tack after the fleet of France?

A. Soon after the French Admiral was about, the wind came a little to the southward, and the British fleet therefore stood on till a quarter past ten, and we lay up better for them than we had before.

Q. At what hour did the British fleet tack after the fleet of France?

A. At this time I am speaking, when we came to sail from the larboard to the starboard tack.

Q. Was there any alteration of the wind at this time, or soon after we got upon the starboard tack?

A. The wind shifted near two points, which brought us to lay up for the sternmost of them; we soon afterwards lost sight of the French fleet in a very thick squall.

Q. After this did you see the French fleet get on the larboard tack before the action began, and at what hour?

A. We lost sight of the French from about twenty minutes after ten, till eleven o'clock; when we then saw them, the fleet appeared in a considerable confusion, a large body of them bearing to the S. S. E. they were then getting under sail upon the larboard tack.

Q. Do you mean bearing or steering S. S. E.

A. No; they were S. S. E. of us; that large body that I speak of, was the body most particularly in confusion; the Admiral spoke to me about them; I went upon the fore-castle, thinking there were a number of them on board each other: That body of them which bore S. S. E. were in such confusion, and so close together, that the Admiral, and most other people on the quarter-deck, thought several of them were a-board of each other.

Q. At what time did the firing begin between the two fleets?

A. At fifteen minutes after eleven, the wind was then at W. S. W.

Q. Had the French ships that began firing, their colours hoisted or not?

A. Neither the English nor the French ships had their colours flying at the time the firing began?

Q. At what time did I make the signal for battle?

A. About twenty minutes after eleven.

Q. Was the French fleet then in a regular line of battle when the action was brought on?

A. About a quarter past eleven, when the action commenced, the French van was very irregular, some more than a mile to windward of others of them; they all of them appeared to keep their wind as they approached us; they were at very unequal distances from each other, independent of their being to windward and leeward of each other; what was properly their center, was pretty compactly formed, but they were not in a line; what should have been their rear division, I could make no observation upon, as they were far to windward of (Mr. d'Orvillier's) of the Bretagne, and the ships about him, and must have passed us while we were engaged with what was properly their center.

Q. Were the greatest part of the ships of the British fleet, when they came to battle, (though not in a line) in a situation to support each other?

A. They were.

Q. How soon after I made the signal for battle was it before the Victory was engaged with the French Admiral?

A. About twenty-seven minutes.

Q. Did any, and how many of the French van fire at random a great way off from the Victory as she passed?

A. All the French van but three or four sail, fired at the Victory; but hardly any of their shot reached us.

Q. Did

Q Did the Victory return the fire of any of these ships?

A. Not one.

Q How many ships a-head of the French Admiral fired upon the Victory (in passing) to do execution?

A. Three sail fired upon us; but except two or three guns there might be fired, there was none returned: The fire was ordered to be reserved for the French Admiral.

Q When the Victory began to fire upon the French Admiral in the Bretagne, how did the French Admiral appear to be situated in respect to his fleet?

A. At a quarter before twelve, when we began to fire on the Bretagne, there was a three deck ship with a white flag at her top-mast-head, close a stern of the Bretagne; there was then three sail of private ships; a ship with a white and blue flag flying at the fore-top-mast-head, and two sail of private ships a-stern of her, and no other ship a-stern of the French Admiral.

Q In passing the French Admiral (except the moment we were obliged to weather our helm to prevent our running on board of that three deck ship with a white flag at the fore-top-mast-head) did not the Victory cling her wind not to lose one fathom of her position and nearness to them?

A. Till the Admiral mentioned that particular, I did not know the helm had ever been put up; I should have said she was always to the wind as close as she could lie the latter part of the action. I believe she would not lay close to the wind.

Q At what time did the Victory pass the rear of the French fleet?

A. At one o'clock.

Q At what time did I make the signal to wear towards the French?

A. The signal to wear was made very soon afterwards, in ten minutes afterwards, as soon as you could see for the smoke clearing away; but the Victory could not be wore till a quarter before two.

Q Can you remember what ships wore with the Victory, and when the signal for battle was hauled down?

A. Not a single ship wore with the Victory; the Prince George continued to stand on the starboard tack, till we had passed her on the larboard tack; and in about a quarter of an hour afterwards she, the Prince George, and one or two sail more, got about or got round.

Q Can you say what the other ships were connected with or near the Victory?

A. I have not answered to the time of the signal for battle being hauled down: I recollect the signal for battle was hauled down at about a quarter before two; I have it not noted down, but I know it was just at the time we wore; I will not be positive whether just before, or just after, from about a quarter before two, till three o'clock; during which time, we were on the larboard tack, standing after the French fleet. There was not a single ship formed wide of the Victory, which had passed all the ships that had fought a-stern of us: There was one ship with her mizen-top-mast gone, that was a-breast of our chest tree at about three o'clock; I took her to be Captain Jarvis, of the Foudroyant.

Q At what hour was the signal made for the line of battle, after being on the larboard tack;

A. At two o'clock.

Q Did you observe any ship while the Victory was upon the starboard tack, to have formed in their stations, or to have closed with the Victory?

A. While we were on the larboard tack, there were no ships near her on the same tack, except the Prince George, the Bienfaisant, and the Foudroyant; the Valiant got about after us, but could not join us, and none of those ships were ever in their station while we were on the larboard

tack, from a quarter before two till three, for they were more than a mile from us, all except the Foudroyant.

Q What was the position of the French fleet while the Victory was standing towards them?

A. The position of their fleet was, about three sail of them to windward of the fore-sail, a large body of the center was right a-head of us, and their sternmost ships not very open upon the lee-bow; at half after two they were above three miles from us, they then began to get round and form upon the starboard tack; for some time they pointed their heads so that they would have weathered the Victory; but about a quarter before three o'clock they kept off the wind and pointed for four or five sail of the English ships that were far to leeward and appeared disabled.

Q Did you observe one of the French ships go off before the wind?

A. At half after two, I think it was, her main-yard and mizen-top-mast gone, she was followed soon after by a frigate.

Q What was the position of the Red division at this time, and how many ships were there at the time you last spoke of from the French fleet?

A. Do you mean during the time we were upon the larboard tack?

Q Yes.

A. There were several positions. When I first saw the Vice-Admiral of the Red and his division, after the action had ceased in the van, they were on the Victory's lee-bow, standing towards us on the larboard tack; this was about five minutes after one, soon after the smoke cleared away; they continued to stand on the larboard tack, some of their ships passing very close at a quarter before two o'clock, when we wore; the Vice-Admiral of the Red, with about seven sail, himself included, were before we wore, on the Victory's starboard bow, or between that and the chestree; at half an hour after two, when the French were forming their line on the starboard tack, and we standing towards them on the larboard tack, the Vice-Admiral of the Red, and the ships with him, were a little before the beam of the Victory; at three o'clock they were broad upon the larboard bow of the Victory, about two miles and an half from us—full two miles and an half from us.

Q At what time did the French fleet draw out from their body, and begin forming a line upon the starboard tack, standing to the southward?

A. This question relates to the afternoon, Sir.

Q It means while we were on the larboard tack.

A. At half an hour after two in the afternoon.

Q Can you describe the situation of the British fleet at that time?

A. The Vice-Admiral of the Red, with six or seven sail, were to windward, nearly a-breast of the Victory; the Vice-Admiral of the Blue was about passing us, continuing to stand on the starboard tack; all the ships of his division had passed us on the starboard tack before that twice: the other ships, there were four or five sail far to leeward abaft, a great way off the beam of the Victory; there was about four sail of the ships of the center division in different positions round us, at about a mile distance, which four sail were all the ships, excepting those with the Vice of the Red, that were on the larboard tack near us.

Q When was the signal made for the British fleet to wear to southward?

A. About seven minutes after three.

Q Does Mr. Moore recollect the position of the Vice-Admiral of the Blue, and the ships of his division, at that time?

A. After we were about on the starboard tack, standing to the southward, we passed the Formidable to leeward; from that time several of the Vice-Admiral of the Blue's division continued to join her, I cannot say the number of them at that time, but they continued to windward.

Q Was

Q. Was the signal flying at that time to form?

A. The signal to form the line of battle was made at two o'clock, when we were on the larboard tack, and was continued flying all the afternoon till within twenty minutes of four.

Q. And how soon after was it hoisted again?

A. It was hauled down at that time, to let the fleet see the signal for the ships to windward to come down into the Admiral's wake, which was at that time hoisted; about ten minutes after that, thirty minutes after four, the ships having seen that signal, it was hauled down, and the signal for forming the line of battle again hoisted, and continued flying, I believe, all night, I don't know any thing of it's being hauled down; it might— not while day-light lasted.

Q. Soon after the Victory was about on the starboard tack, did she lead from the wind to give protection to those ships you have before described?

A. On the Victory's first coming about to sail on the starboard tack, at seven minutes after three, she was kept to the windward for about ten minutes, to endeavour to collect some of the ships nearest; but the Admiral gave that up, observing at the time that he directed the Victory to be kept from the wind, that the French had a design to affront him, (those were his words) by an attack on those ships that were to leeward. The Victory was then kept away from the wind, steering S. S. E. The wind was abast the beam about half a point. I am now speaking to about twenty or twenty-five minutes after three, for the wind afterwards came farther to the West.

Q. What time was the signal for the ships to windward, to come into the wake, again made in the course of the afternoon?

A. At the time I was last speaking, the signal for ships to come into the wake had not been made; it was not made till forty minutes after three, and was hauled down ten minutes before four, and the signal for forming the line was again hoisted. At half past four the signal for the ships to come into the Admiral's wake was again made, but the signal for the line of battle was kept constantly up; not hauled down upon making it the second time.

Q. What was the position of the two Vice-Admirals, and the ships that were with them, at that time and till five o'clock?

A. The Vice-Admiral of the Red, with six or seven sail, including himself, was forming a-stern of the Victory, in consequence of a message which had been sent to him by Captain Sutton in the *Proserpine*; there was no ship of the center division but the *Foudroyant* then a-stern of the Victory; the Vice-Admiral of the Blue, with about seven or eight sail, was to windward, between the Victory's weather-beam and her quarter, lying close, keeping their wind, between two and three miles from us: Captain Faulkner, at that time, gave me his glass to observe; we could count every gun and every port distinctly; the four or five sail were still to leeward on our bow.

Court. The crippled ships?

A. Those ships that had run to leeward after the Admiral.

Q. What had been the conduct of the French fleet from three o'clock to that time, and how were they situated with regard to the English fleet?

A. The French fleet had continued forming their line, keeping a course nearly parallel to that which was held by the Victory and the ships near her; they were, at half an hour past four, about three miles a-stern and to leeward of the Victory.

Q. At that time what sail had the Victory set?

A. The Victory, at that time, had her fore-sail and fore and mizen-top-sails set, her main-top-sail was also set with two reefs in it, which was done when it was bent to the yard; the Victory's main-top-sail was unbent soon after we came upon the larboard tack, as it was unserviceable.

Q. Did you hear any messages or orders sent by frigates in the course of the afternoon of the 27th of July?

A. At five o'clock the *Milford* was hailed, and ordered to acquaint Sir Robert Harland, that it was the Admiral's orders he should make sail with the ships of his division as were fallen a-stern of the Victory, and form the van, which was his proper station; the exact words I cannot tell; that was the sense of the order. The *Fox* was sent immediately after to Sir Hugh Palliser, to tell him to bear down, as the Admiral waited only for him and his division to bring the enemy again to action.

Q. Does Mr. Moore recollect any signal that was made at that time, or was there a general signal made for ships to get into their station?

A. At five minutes past five, the signal was made for all ships to get into their station.

Court. What was that signal?

A. A Spanish flag at the main-top-mast-head, by the Admiral's additional instructions.

Q. Were there no pendants?

A. Not at the time the signal was made at the mast-head; but the *Prince George* and *Bienfaisant*, whose stations were a-stern of the Victory when the signal for the line of battle was flying, and we upon the starboard tack, had, seeing the Vice-Admiral of the Red formed with his division a-stern of the Victory, fallen into the line in the manner they would have done had there a signal existed for the forming a line of battle reversed; and it was to communicate to them that the Admiral had given orders to Sir Robert Harland to form a-head, that he then directed those two ships pendants to be thrown out.

Q. I would ask Mr. Moore, if they did not obey that as quick as could possibly be expected?

A. They obeyed it immediately.

Q. Then before they got a-stern into their stations, after the Vice-Admiral of the Red had gone from the rear, what ships were formed in a line a-stern of the Victory?

A. The *Foudroyant* only, not one but the *Foudroyant*.

Q. Did the Vice-Admiral of the Blue lead down the ships of his division in obedience to the general signals I had made, or the orders sent by the *Fox*, any time of the afternoon of the 27th of July?

A. No.

Q. What was the position of the Vice-Admiral of the Blue from five o'clock till seven o'clock?

A. He kept nearly the same bearings of us, but kept his wind between the Victory's beam and the quarter.

Q. Were there any particular ship's signals made, at or about seven o'clock, for them to come into their stations?

A. At seven o'clock the particular signal belonging to every ship of the Vice-Admiral of the Blue's division, except the *Formidable*, was made; the signals for ships coming into their stations was kept constantly flying, but their pendants were thrown out.

Q. What sail was the Victory under the whole of the afternoon, the remainder of the afternoon of the 27th, after the time you spoke of her?

A. Double reefed top-sail and fore-sail, going about two knots, or two and an half.

Q. Did the Victory make a less sail than that before dark?

A. At eight we close reefed the top-sails, it was not dark till near nine, the French reefed just after us.

Q. What was the relative position?

A. The Vice-Admiral of the Red was fallen ahead of the Victory, the ships belonging to the center division had, all but one or two, joined us; the *Foudroyant*, *Prince George*, and *Bienfaisant* were formed in the line a-stern of us, a considerable

ble way a-stern of them, but not in the line; there was another ship endeavouring to get up, I took her for Captain Clements, the Vengeance, the Vice of the Blue, with the ships of his division, were laying to windward about three miles, standing on, excepting about three or four sail who had began to obey the signal for coming into their stations. The French fleet were steering a parallel course to the Victory; we were very near the wind at that time, we had hauled our wind an hour before dark. The third ship of the French van was a-breast of our quarter, about a mile and an half to leeward of us; the French line was formed with fourteen sail a-head of the French Admiral, and the same number a-stern of him; their best going ships were under top-sails, their heavy sailing ships with top-sails and fore-sails, and some had their main-sails set. They were formed in a line.

Q. Was the signal for forming the line, and for ships to come into their stations, flying till dark?

A. It was flying long after dark.

Q. Did you see the Formidable repeat the signals for the line of battle at any time in the afternoon, or the Spanish flag at the main-top-mast-head, for ships to come into their stations?

A. We passed the Formidable twice from about half an hour after two till half after three, she had at that time no signals flying of any sort; at the time the signal was made for ships to come into the Admiral's wake, a little before four o'clock, the Formidable repeated that signal, but I never saw her repeat any other in the course of that afternoon. She might have done that, but I did not see it.

Q. Where was the Formidable when you last saw her in the evening of the 27th of July?

A. About three miles to windward of the Victory, standing upon a wind before the Queen, abaft the beam, about a point and an half or two points.

Q. On the morning of the 28th of July how many of the French fleet were in sight?

A. Three sail, one much larger than the other two.

Q. What distance were they from the Victory?

A. Three miles, the nearest of them.

Q. Were any ship's signals made to chase?

A. The Bienfaisant, the Duke, the Prince George, and Elizabeth's signals were made to chase; but the Elizabeth informed you she could not carry sail upon her masts, and it was visible the Prince George could not make sail as a ship in chase would.

The Admiral. Mr. President, I have examined this witness in order to furnish the Court with an accurate narrative of the transactions of the 27th and 28th of July, he having been particularly appointed by me to observe them. It has been very long and tedious, I hope I shall be pardoned for having taken up so much time of the Court. I have no more questions to ask him.

Cross-examined by the Prosecutor.

Q. I will only ask Mr. Moore one question. Whether he takes upon him to say positively the Formidable did not repeat the signal for the line of battle when the Victory was a-breast of her?

A. I believe she did not; I can say no more than my belief, I did not see him.

Q. Nor that whole afternoon till dark did not you see it?

A. I did not indeed, as I have before observed, I have heard she made that signal.

Mr. Moore then desired to speak to the Court, but was refused by the President, as he was told he might withdraw; but just before he went he desired to know whether he must give further attendance on the Court, as he was going abroad with Sir Edward Hughes to the East Indies.

The Court then told him he need not attend any more.

GEORGE ROGERS, Esq. sworn.

The Admiral. Did you, upon my desire, take notes for me on the 27th of July?

A. I did, Sir.

Q. And you usually have done so, at all times while I was in the service during the last war?

A. Yes.

Q. Were you ordered to attend me to take notes on the 27th of July?

A. Yes, I did so on the 27th of July; I did attend on the 27th of July.

Q. Have you usually done so at all times when I have been in the service the last war?

A. I had the honour of attending the Admiral, in that situation, during the whole of his services the last war, which is the greatest pride I have.

Q. At what hour, Sir, did the French begin their fire upon the 27th of July?

Mr. Rogers. May I recur to my notes?

Q. Were they taken at the time, and by yourself?

A. Actually wrote at the very time.

Q. And in that book?

A. And in this very book.

Q. At what hour did the French begin their fire upon the 27th of July?

A. At twenty minutes past eleven by my watch.

Q. What time did I make the signal to engage?

A. At forty minutes * past eleven. Please to read the question again.—The question not read again.

Q. At what hour was it that the Victory began firing upon the French?

A. A quarter before twelve, I think.

Q. What French ship did the Victory begin her action first with?

A. A three-decked ship, with a flag at the main-top-mast-head; some guns might have been fired before, but the whole of the fire was directed at that ship.

Q. Did I pass in action near any other three decked ship of the enemy?

A. Yes, there was another that followed close to the first, and approached much nearer the Victory.

Q. How near was she?

A. Very close indeed, so as to appear as if she was coming on board.

Q. In what part of the French fleet were those two Admirals situated?

A. Very near the rear.

Q. At what time did the Victory pass the rear of the French fleet, and cease firing?

A. At one o'clock, or a few minutes after.

Q. At what time did I make the signal for the fleet to wear?

A. At forty-five minutes past one.

Q. At what time was the signal for battle hauled down?

A. I cannot say the exact minute, but very near the same time.

Q. Does Mr. Rogers know what number of ships did wear with the Victory, when she did wear, and get upon the larboard tack?

A. I cannot say; I saw few or none at that moment.

Q. What time was the signal for the line of battle a-head made after the being on the larboard tack?

A. It was made at two o'clock precisely by my watch.

Q. At what time was the signal made to wear to the southward again?

A. At ten minutes past three.

Q. Did you observe the French fleet at this time, and were they forming their line upon the starboard tack?

A. They were drawing out from a body, forming a line.

Q. How long had they been standing towards the Victory before they wore, and how were they steering?

A. I cannot

* Forty minutes, in the hurry of looking over the minutes, was stated by mistake; it was meant for twenty minutes, the time wrote down in the minute-book, which was rectified the next morning.

A. I cannot be exact as to the first part, but when I observed them they were laying up for the Victory's stern.

Q. That was then after the Victory had got about again upon the starboard tack?

A. Yes.

Q. Before the Victory wore from the larboard tack, had any of the center division or of the Vice-Admiral of the Blue's division, got either close connected in their station in the line of battle, or near to the Victory?

A. There were no ships in the center connected with the Victory; the Vice-Admiral of the Red, with part of his division, were to windward.

Q. After wearing to the southward did you observe any ships of the British fleet much to leeward, and repairing their damages?

A. Yes, I particularly took notice of four.

Q. Did the van of the enemy seem to point towards them?

A. They did so, they kept away for that purpose apparently.

Q. Did Mr. Rogers observe the Victory edge away two or three points, or near towards those ships to secure their junction?

A. I do recollect very perfectly she did.

Q. Was the signal for the line of battle a-head flying from the time the Victory wore to the southward till dark; or was it ever hauled down to shew plainer the ships signals for bearing into my wake?

A. From my own notice I should say the signal for the line of battle was kept flying from two o'clock, the hour I think I said it was hoisted, till dark night; I understood it had been hauled down some short time, the better to shew the blue flag that had been hoisted upon the mizen-peak for another purpose; but I did not see it hauled down myself.

Q. Did Mr. Rogers ever observe the signal for the line of battle a-head to have been repeated on board the Formidable during the afternoon?

A. I never did, I never saw the signal flying on board the Formidable for the line of battle, during the whole afternoon.

Q. At what time did I send the Milford to Sir Robert Harland in the afternoon, after being upon the starboard tack?

A. At three quarters past four o'clock by my watch, when the message was delivered.

Q. At what time did I send the Fox to Vice-Admiral Sir Hugh Palliser?

A. I cannot be exact as to the minute; but it was immediately after hailing the Milford, which I have considered was five o'clock, or rather before it.

Q. What orders did I send by the Fox?

A. To desire Sir Hugh Palliser to bear down into his station in the line; for that I (the Admiral) waited for him to renew the action.

Q. Did you observe the Fox speak to, or range near the Formidable?

A. I saw the Fox close under the Formidable's lee-quarter.

Q. At what time might that be?

A. I suppose about half an hour from the time she left the Victory.

Q. Did the Vice-Admiral of the Blue bear down in consequence of the message I sent by the Fox?

A. I did not see any motion made on board the Formidable to comply with the orders, though I looked at her with great attention.

Q. At this time, how far upon the weather-quarter did she appear to be?

A. I would wish not to be particular as to distance, but she was far drawn upon the quarter.

Q. Were there any signals made at seven o'clock on board the Victory?

A. There were several pendants thrown out for ships to come into their station.

Q. How was the Vice-Admiral of the Blue situated then?

A. I cannot say I observed any alteration in her position from what I observed before.

Q. Did you see any, and how many of the Vice-Admiral of the Blue's division?

A. There were some of the ships bore down; but I cannot be particular.

Q. Were the French fleet seen in the morning of the 28th from the Victory?

A. At the opening of the day I saw only three ships, one of which I think I kept my eye on most of the night at times.

Q. Did I send ships to chase them?

A. There were signals made for ships to chase.

Q. Do you know what ships?

A. The Prince George, Elizabeth, Bienfaitant, and I believe the Duke; I am not positive as to the Duke.

Q. Was it observed, after the signal was made to chase, that some of them were crippled?

A. I observed particularly the Prince George, who set no sail on her fore-top.

Q. Have you any recollection of the perplexity and trouble, both to myself and you, in copying and penning my letter relative to the attack in the afternoon upon the French fleet, on the 27th, so as to convey no censure upon the conduct of the Vice-Admiral of the Blue?

A. I do perfectly recollect that you had great difficulty in forming the rough draughts of the letter to relate facts, without censuring the man you then thought your friend, with whom you was in a habit of intimacy, and whose courage I knew you thought well of.

Cross-examination.

Admiral Montagu. If the signal for the line of battle had been flying on board the Formidable, was you (in the Victory) in such a situation as to see it; or did any other ship between you and the Formidable intercept your view?

A. If it had been flying on board the Formidable, as I looked for it with eagerness and great attention from many different parts of the ship, I think I must have seen it.

Q. From the time the signal was thrown out for ships to windward to come down into the Admiral's wake, to the time of it's being hauled down, did you hear the Admiral express his displeasure at the ships not bearing down agreeable to the signal flying for that purpose; and that if he could have formed his line, he would have again renewed the action?

A. The Admiral expressed great anxiety and uneasiness at the ships not bearing down in consequence of the signal; and it was my idea, and I believe the sense of every body on board the Victory, that he only waited for those ships to renew the action with the French.

Prosecutor. Q. The time that you speak of giving orders to the Fox, does your minutes express the hour and minute; is that noted in your minutes; is it marked in your minute-book the hour and minute?

A. The time of delivering the message to the Milford is marked at three quarters past four; the hailing the Fox succeeded so immediately, that I have not made a distinction as to the time of the exact minute: I can say it did not exceed five o'clock.

Q. Is the time of speaking with any other ship regularly noted in your minute-book, except that of speaking to the Fox?

A. The Milford and Fox are both noted particular.

Q. You have described the Formidable to be a-stern of the Victory's quarter; might not the signal on the mizen-peak be out and you not see it: Are you positive you actually saw the mizen-peak open and clear of her sails?

A. I looked at the Formidable in different situations, as I have before said; and I did not see the signal for the line flying on board her: I knew the mizen-peak was the place for the signal.

The Court adjourned to the next day.

The Twenty-third Day's Proceedings, Feb. 2, 1779.

The President desired a Letter might be read that was sent by Mr. Rogers to him; stating, upon his recollection upon leaving the Court yesterday, and looking into his notes, he found he had mistated a point of time in giving his evidence, and desiring the Court would permit him to be called in to rectify the mistake.

The Court immediately ordered him to be called in.

Mr. Rogers. I made a mistake yesterday, respecting the time of the signal for battle being hoisted; I gave in for my answer yesterday at forty minutes past eleven.

Court. What was the time?

A. At twenty minutes past eleven; I had cast my eye upon a wrong part of my notes.

Admiral CAMPBELL sworn.

The Admiral. Q. What day was the French fleet first discovered?

A. On the 23d of July.

Q. Do you think the French were able to determine the force of the English fleet that afternoon?

A. Certainly not; we could not even determine their number, much less their force; of course they could not determine ours.

Q. What was the position of the English and French fleets on the morning of the 24th, with respect to each other?

A. The French fleet were at a very considerable distance upon the weather-bow; some of them seemed much dispersed, and one or two of them upon the lee-bow; but the bulk of the fleet wide upon the weather-bow.

Q. Can you inform the Court what signal I made that morning, and what were the objects of them?

A. Perhaps not all with certainty; there were several signals made, and it is so long ago I cannot, on oath, venture to be precise about them: The first signal was to draw into a line of battle, and soon after, seeing the French going off, there was a general signal to chace; then it was hauled down, and some of the ships not leaving off chace there was a signal to call in all ships from the quarters of the compass they were chasing.

Q. Does Admiral Campbell recollect Captain M'Bride coming on board the Victory on the morning of the 24th, and his remarks upon the appearance of the French fleet?

A. Yes: I remember Captain M'Bride came and hailed the Victory; he gave an account of some ships of the French that he saw disabled; as it then blew pretty fresh, and we did not hear him distinctly, he offered to come on board, which he was directed to do: he then hoisted his boat out, and came on board, and gave an account (which indeed we saw ourselves) that one of the ships had carried her fore-top-mast away, and, I think, her main-top gallant-mast, and another ship had lost her main-top gallant-yard I think, as near as I can recollect particularly, and wished for leave to go a-head to chace the ship without her fore-top mast, in hopes of being able to cut her off, or forcing the French fleet to bear down to her assistance, and thereby bring on a general engagement.

Q. Does Admiral Campbell recollect farther orders that I gave, relative to the Elizabeth?

A. The Admiral directed Captain M'Bride to go and chace that ship, and to hail the Elizabeth as he passed her, and direct him to assist him (the Elizabeth was a-head, and one of the nearest ships to him), and to continue the chace, if they had any hopes of cutting off that ship, even though the signal for the line of battle was made, unless their proper signals were made to call them off.

Q. I would ask Admiral Campbell if he recollects two other ships of the French fleet that the English fleet cut between, and separated from the French fleet?

A. Yes; I recollect very well two large ships that we had in the morning seen a little upon the lee-bow, but upon the general signal being made for the English fleet to chace, and pushing on, those two ships went large; we then believed them to be part of the French fleet, and indeed it was proved they were, as they never joined.

Q. If the French Admiral had ever intentions to give battle to the English fleet, was not the junction of those ships with his main body a temptation for him to bring it on that morning?

A. Most certainly.

Q. Does Admiral Campbell recollect my making the signal that afternoon again for the line of battle?

A. Yes, I do; it was made.

Q. Did the French fleet avoid us from that time every day?

A. Yes, they did.

Q. If you commanded an English fleet in the situation the French then was, with respect to the English, the 24th, 25th, and 26th, should you have hesitated one moment in bearing down and bringing them to action, upon account of the wind and weather, during any part of that time?

A. Certainly not; no man would, I think.

Q. If I had pursued in a line of battle could I have preserved my nearness to the French fleet, or even kept sight of them?

A. I think you could not; we were more than once in danger of losing sight of them, even in the manner we pursued them, and had actually one morning lost sight of them for an hour and upwards.

Q. I should be glad if Admiral Campbell would give an account to the Court from the 27th at daylight in the morning, relative to the position of the English fleet and the French fleet, and about what passed till the French fleet tacked to the southward?

A. At sun-rise in the morning, or about that time, the French Admiral was nearly upon the beam of the English Admiral, I reckon better than three leagues to windward; the Vice Admiral of the Red and his division was upon the weather-quarter of the Victory; the Vice Admiral of the Blue a little before the lee-beam of the Victory, about three miles to leeward, and the ships of his division under easy sail accompanying him, the Vice Admiral himself having his main-sail up; his main-sail was not set, therefore the signal for all the two deck ships of his division that were going under easy sail, their signals were made to chace to windward, and they were ordered to get up to the main body of the fleet with the greatest expedition, and soon after they had made sail the Vice Admiral himself set his main-sail, and made more sail; he set his main-sail, stay-sail, and gib, in particular I recollect the main-top-gallant stay-sail; between eight and nine the French fleet began to go upon the other tack, and I believe they were all about by nine, or a little after.

Q. When that signal was made for the ships of the Vice Admiral of the Blue's division to chace, was there any greater indication of the French fleet's intending to come to action than on the preceding days?

A. No, by no means.

Q. What would have been the consequence if I had formed the line of battle instead of closing with the French fleet in the manner I did?

A. Increased our distance from them as much as ever it had been from the first time of seeing them.

Q. Would that have been the way to have brought them to action?

A. No,

A. No, quite the reverse.

Q. I wish Admiral Campbell to acquaint the Court, from the time of my tacking to my passing the rear of the French fleet, what circumstances occurred to him?

A. The whole of the English fleet tacked together by signal at, I think, ten o'clock, or a little before, and the wind very soon after veering about two points, we hoisted our stay-sail, and set the main-top-gallant sail, in order to near the French with the greatest expedition, whom we imagined at that time were pretty near a-head, for we had then lost sight of them in a thick, dark squall; when the squall cleared away, which was about three quarters of an hour, we saw they had altered their position, or were then altering it, to the contrary tack, to the larboard tack, and were at no great distance from the van of our fleet from Sir Robert Harland's division, who was then in the van of the fleet; in a very short time after a firing commenced in the van of the fleet, whereupon the Admiral immediately ordered the signal to be made for engaging, and took me to the gangway, and observed to me that several of the French ships seemed to be in great confusion, as the expression was, he believed they were running aboard of each other, that was just his expression; we pressed on with all the sail we had then abroad, attended by the ships of our own division, pretty well connected till we came to the breast of the French Admiral, with whom we began to engage; we hauled our main-sail up just before we began firing, it was not hauled up above a minute and an half before we began to engage, and we continued to engage the ships in succession a-stern of him till we had passed the whole of the French line. One thing I should have before observed, that the main-top-gallant sail was taken in immediately, because we observed one of our ships to windward took her's in, and we thought the squall was too strong for her.

Q. In drawing near the French ships to the passing of them, did they appear to Admiral Campbell to be in any regularity?

A. The van of the French Fleet appeared to be in a pretty regular line, except in point of distance, they were not at regular distances from each other, but the rest of the French Fleet were by no means in a regular line?

Q. I am charged with having stood to a great distance beyond the enemy before I wore to stand towards them again; I desire you will inform the Court whether it was practicable or expedient for me to wear sooner than I did?

A. No, it was not.

Q. When I did wear, were any ships about me able to wear with me, or did they?

A. No, none of them wore immediately that I saw.

Q. Have you any reason to believe, from any thing you saw, or was acquainted with, that the Vice Admiral of the Blue was at any time exposed to be cut off?

A. No.

Q. When was the signal for battle hauled down?

A. Orders were given for hauling it down immediately upon the ceasing of the firing a-stern, as the ships were then out of engaging distance.

Q. As I am charged with hauling it down at that time, was it, in your judgment, proper to be kept abroad any longer?

A. No, it was not.

Q. Did I make a signal for the line when I hauled down the signal for battle?

A. The signal for the line was immediately made upon our wearing to the larboard-tack: I don't know how soon one was after the other, but it was in a very short space of time.

Q. Was that the properest signal I could make to collect the fleet together to renew the fight?

A. Undoubtedly it was.

Q. I am charged with having shortened sail after I had wore to stand toward the enemy, instead of advancing towards them, I desire to know if I had ships enough collected with me to admit of my advancing faster than I did?

A. No. The whole time that the Admiral remained upon the larboard-tack, standing towards me, he had not one of the fourteen ships stationed a-head of him that had got into their proper line: The Vice Admiral of the Blue indeed was a-head of the Victory, after we wore towards the enemy; but instead of remaining there, and repeating the signal for the line to call the ships of his division into their stations, he passed upon the starboard-tack a-stern of the Victory, in direct disobedience to the signal then flying.

Q. Where was the Vice Admiral of the Red at this time, and what number of ships of his division were with him?

A. The Vice Admiral of the Red was upon the weather-bow of the Victory a considerable distance, but I don't know the number of ships he had with him, I did not count them.

Q. Where was the French fleet at this time?

A. I don't know what particular point of time you mean, because it is a long space; I don't know what time the Admiral wishes to fix.

Q. After we were on the larboard-tack, before the French wore?

A. They were right a-head, as near as I can recollect, rather to windward, if any thing.

Q. As the two fleets were then situated, was the signal appointed by the thirty-first Article of the fighting instructions, applicable to the purpose of directing the Vice Admiral of the Red to lead on the larboard-tack, and for the rest of the fleet to form?

A. No; certainly not: the signal directed by the thirty-first Article has a precise and determined signification affixed to it, and can be applicable to nothing else.

Q. While I was upon the larboard tack, did you see the French Fleet in disorder?

A. No; I did not see them in any other disorder than what must appear from a fleet's changing from one tack to another, which they did a little while before we wore.

Q. Had I at any time, while I stood on the larboard tack, a sufficient force collected to renew the fight?

A. I have already said, that the whole time you was upon the larboard tack you had not one of the ships stationed a-head of you got into their stations, and I don't recollect there were more than four at most of those stationed a-stern that got into their stations.

Q. Was the signal for the line flying all the time I was on the larboard tack?

A. Yes; the signal was hoisted very soon after we had got upon the larboard tack, and continued flying from the time it was hoisted.

Q. Then I will ask you, under these circumstances, did I not do the utmost in my power to take, sink, burn, and destroy the French Fleet?

A. I think you did.

Q. I am charged with having wore at this time, and made sail directly from the enemy, and leading the whole British Fleet away from them; I desire you will explain all you know of that transaction?

A. Upon seeing the French Fleet wear and stand towards the English Fleet, the Admiral directed Captain Sutton of the *Proserpine*, who was then on board, to go to Vice Admiral Sir Robert Harland, and direct him to form a line in the van, as we had none of our ships pushing a-head of us in their proper station: but before Captain Sutton got away from the Victory, before he

put off in his boat, the French ships edged away, and seemed to point to four or five of our ships that were a great way to leeward upon our lee-quarter, whereupon the Admiral ordered the signal to be made for wearing: we wore and stood down to succour those ships, the signal for the line of battle being still kept flying, and after we were about keeping much away, I remarked to the Admiral we should join some of our ships, which we might do faster, if we did not keep so much away.—He took me to the gangway, and said, Don't you see the French pointing to the ships to leeward; I must not receive an affront there; and so ordered the ship to be kept away to succour them.

Court. Was any ship near you at this time, at the time you are speaking of?

A. Yes; there were several of our own division near us at that time, and were with us, and followed us down, they had been collecting the whole time we were upon our larboard tack.

Q. Was the signal for the line still kept flying?

A. I have said so.

Q. What sail did I carry at this time?

A. To the best of my recollection, double reefed top-sails and fore-sail; indeed the main-top-sail was not bent when we wore; we had while on the larboard-tack unbent the main-top-sail, that was a good deal wounded with shot; seeing we could do so without any loss of time before the ships could be collected, to enable us to advance faster upon the French fleet; and we were just beginning to haul it out to bend it, as we wore to go down to succour those ships, and it was bent with as much expedition as any main-top-sail I ever saw.

Q. Do you recollect my ordering the Milford to Sir Robert Harland, to direct him to leave the rear, and to form a-head, and at what time?

A. I had forgot to mention that Captain Sutton was ordered upon our wearing to succour the disabled ships, to go and direct Sir Robert Harland to form in our rear, while we were going down to those ships; and I remember Sir William Burnaby was ordered at, I think, five o'clock, to go and direct Sir Robert Harland to resume his station in the van.

Q. Do you recollect at the same time my ordering the Fox to go to the Vice Admiral of the Blue?

A. I do.

Q. What orders were sent by the Fox?

A. Captain Windfor was directed to go to the Vice Admiral of the Blue, and tell him the Admiral wanted him to come down with all expedition with the ships of his division, as he only waited for its being performed to renew the action.

Q. Did you add any thing to that message as he was going off?

A. I did add a little to the message, but I believe Captain Windfor did not hear me, for the people on board his ship were making a great noise at that time, and he was then increasing his distance from us, he was then steering from us.

Q. Do you recollect what the words were, Admiral Campbell?

A. Yes, I desired him to tell the Vice Admiral that we had long waited for him.

Q. Do you recollect my calling, myself, from my gallery, at the time the message was delivering?

A. Yes, I heard the Admiral's words, but I cannot be precise as to what he said, I had repeated the message myself to Captain Windfor; I had attempted first to do it from the quarter-deck, and then went to the stern gallery, because I thought I should be heard better from thence, and then I heard the Admiral's voice from his gallery.

Q. Where was the Vice Admiral of the Blue at this time?

A. He was wide upon our quarter, at a considerable distance.

Q. After being upon the starboard-tack, did I

not the whole afternoon express to you my uneasiness, as well as surprize, at the Vice Admiral of the Blue's remaining to windward, without making any effort to come down with his division in obedience to the signal?

A. You frequently did; and I remember very well, upon one of the occasions, I expressed my apprehensions of the Vice Admiral's being wounded, as I said I was sure the Formidable could not behave so if he was in health.

Q. Was not my conversation with you, that I only waited for Sir Hugh Palliser's coming down to re-attack the French?

A. It was.

Q. Did I ever seem to give up the design of re-attacking them till evening was coming on?

A. No.

Q. Do you recollect what sail I made in the evening, to regulate the going in the night?

A. Yes, at eight o'clock, we took the third reef in the top-sail, and handed the mizen-top-sail, that it might not obstruct the sight of the top-light from the ships stationed a-stern, and we went with a treble reefed top-sail and fore-sail all night; the French Fleet reefed immediately after we began to reef.

The Admiral. May I beg the indulgence of the Court to have the Robuste's log-book read to that time where the alterations were made.

Part of the Robuste's Log read.

A little before Two the signal for engaging hauled down the signal to wear, and a signal to draw into a line of battle, a cable's length afunder. Having passed the enemy's ships, and exchanged broad-sides with twenty-five of them, found our masts and rigging wounded, and between there and four feet water in the hold from shot between wind and water, and two of our starboard lower deck ports shot away, kept the pumps working, employed knotting and splicing the rigging, stopped our shot holes under water; at three, the Carpenter reported her found, wore ship, and tacked; but finding while on the larboard-tack the water gained upon us, tacked again, got a spare top-sail yard and sail; *between six and seven o'clock, perceiving on board the Admiral, ours, and several ships signals to bear down in the line, which was repeated by the Formidable in the evening, stopped our shot-holes, took our station in the line, and continued the whole night with as much exactness as the ship could do, with the Admiral, making much sail.*

The Admiral. I must observe, after Admiral Campbell's evidence upon this particular matter, it requires no comment.

Q. Admiral Campbell, you have heard the fifth Article read, wherein I am charged with not having pursued the enemy upon the morning of the 28th; I desire you will inform the Court all you know concerning it.

A. In the morning of the 28th, the French Fleet were not in sight, as I know of; there were three French ships at a considerable distance from each other, and a little to leeward of our rear ships; but before we could well make out what they were in the Victory, they had bore away, and were crowding sail to leeward, which was the first confirmation I had of their being French ships; the signal was immediately made for some of our ships to chase them, as well as I recollect the Bienfaisant and the ships we found out to be the nearest; we were trying to look for ships most proper to chase. The Bienfaisant, the Prince George, the Elizabeth, and, I think, the Duke's signal was made, because we knew she had not suffered any thing in the engagement. I think, we at the same time bore away in the Victory, and, as well as I can recollect, made a signal for the fleet to spread North and South; but the Prince George and the Elizabeth, neither of them making sail like chace-
ing

ing ships, indeed the Elizabeth steered towards us, and soon afterwards hailed us, and told us she could not carry sail as a chasing ship. The Admiral in a short time called in the chasing ships, and the three French ships had got the start of ours, before the signal was made for them to chase, and we soon afterwards brought to upon the larboard tack, and made a signal for ships to set up their rigging.

Q. If I had pursued to the eastward with the fleet in the condition the fleet was then in that morning after the action, was there any probability of getting up with the French Fleet, the wind and weather as it was, before they could reach the Port of Brest?

A. I am clearly of opinion there was not of pursuing, with the fleet in the state it was, they could not have been kept together carrying chasing sail, the disabled ships must have fallen a-stern, they could not keep up, as they were not able to carry chasing sail.—One thing I beg leave to observe to the Court, when I say disabled ships, I only mean to say disabled in their masts and rigging; I don't know that they were any other way disabled.

Q. I would ask Admiral Campbell, while I was upon the starboard tack in the afternoon of the 27th, under the degree of sail he has described, and with a signal out for a line of battle, to form by line, whether it has the least appearance of flight?

A. Certainly not.

Q. Did you ever observe the signal for the line of battle repeated on board the Formidable at any time of the day or evening of the 27th of July?

A. No; I think it would be very improper to have been repeated, unless it had been obeyed by the Formidable; it would have been very un-officer-like to have repeated it without obeying it at the same time.

Q. You have heard all the Articles of the Charge read, and therefore I desire you will state to the Court any instance, if you saw or know of any such, in which I negligently performed any part of my duty on the 27th or 28th of July?

A. I never saw any negligence, either then, or at any other time while I served under the Admiral; I never served any officer, who was more diligent in the execution of every part of his duty, as far as came within my observation.

Q. I would ask Admiral Campbell, whether I did not give instructions, upon my sailing again with the fleet, to direct an inverted line when I should see occasion for it, by way of providing for the case of calling ships into their station, for changing the order of their line, when I thought it for the public advantage?

A. Yes; you did.

Q. Do you recollect my giving this additional fighting instruction (which I shall mention) at sea, (after sailing) in these words. In the line of battle the flag of the Admiral commanding in chief is always to be considered as the principal point of direction for the whole fleet, in forming and preserving the line?

A. Yes; you did.

Court. Do you know at what time the Vice Admiral of the Blue got into his station in the line, upon the 27th at night, with his division?

A. The Vice Admiral of the Blue did not get into his station while it was light enough to see he had done so.

Q. Did you observe whether the Vice Admiral of the Blue carried distinguishing lights at the bow-sprit end that night?

A. I did not see any thing of the Vice Admiral of the Blue from the time the day shut in till next morning.

Q. What distance was he in the morning in the line when you did see him, upon the 28th, from the centre division?

A. I cannot be sure, I did not take much notice; those three French ships to leeward engrossed my attention at that time.

PROSECUTOR. Cross Examination.

Q. I would ask Admiral Campbell, as he mentioned it, while the Admiral was standing with his head towards the French Fleet, the Formidable was the only ship a-head of him—I would ask Admiral Campbell, if the Formidable was not laying with her head after the enemy, within gunshot, till the signal for battle was hauled down, and till the Victory shortened sail, and the Admiral at that time at a great distance?

A. I never saw the Formidable upon the larboard tack after passing the French line, nor did I ever hear she had been upon the larboard tack till the Vice Admiral told me so himself in Mr. Keppel's house in London.

Q. When was the time that you first saw her that enabled you to say she was a-head of the Victory when you was standing that way?

A. A little before the two ships met; the Victory upon the larboard tack with her head to the enemy, and the Formidable upon the starboard tack approaching the Victory; I then saw the Formidable, and continued to look at her till she passed the Victory to leeward.

Q. Then, Sir, the Victory with her head towards the Formidable, as you have described, was it possible to see the signal for the line out from the Formidable on board the Victory till she came so near as to open her after-masts.

A. The Victory was not the ship that the Vice Admiral should have looked to for the signal for the line; there was a gun fired when the signal was made that ought naturally to have directed him to look to the Repeating Frigate where the signal was flying.—I am ashamed of the question.

Q. Was not Captain Marshall, the captain of the Repeating Frigate, on board the Victory at the time when the Formidable came close to the Victory?

A. I do not recollect; I remember Captain Marshall was on board the Victory when we wore to go to succour the three ships, but that was at least a quarter of an hour after the Formidable had passed the Victory: I am not quite sure whether he was on board at the time the Victory and Formidable passed each other.

Q. While he was on board, was not his frigate near the Victory, in readiness to take up the Captain's boat, and steering as the Victory did?

A. I believe she was; I do not know; I cannot speak precisely to it; I did not take much notice of it.

Q. Then, Sir, that being the case, was not the signal on board of the frigate equally imperceptible to the Formidable as it was on board the Victory?

A. The signal had been repeated by the frigate long before Captain Marshall came on board the Victory; but indeed that question I cannot answer, the people on board the Formidable should answer that question I think.

Q. I desire Admiral Campbell will endeavour to recollect himself with as much precision as he can, whether or not the signal for wearing the blue pendant at the ensign-staff was not flying on board the Victory before the Formidable came the length of her?

A. I cannot say it was, but I do not believe it was.—At such a distance of time it is impossible to speak precisely to these points.

Q. You

Q. You are very exact in some things, why not so in all?—Does Admiral Campbell recollect that when the Captain of the Repeating Frigate left the Victory, it was at the time that she was then actually wearing?

A. I really do not know when he left it precisely, I only remembered when he was on board from the circumstance of his being upon the quarter-deck, and helping to haul out the main-top-sail when we were hauling it out.

Q. You speak of that circumstance yourself as being the time of wearing?

A. Yes; I really don't recollect when he left the Victory precisely, I only remember he was on board from the circumstance of his being aboard upon the quarter-deck at the time of hauling out the main-top-sail.

Q. You said before it was the time of wearing.

A. It was after we wore, to the best of my remembrance.

Q. As Admiral Campbell has said he cannot positively say when the signal for wearing was out before the Formidable came the length of the Victory, nor when she was a-breast of her, I ask him if he is not very precipitate in charging the Vice Admiral before this Court with acting in direct disobedience to the signals?

A. No; I do not think so. The signal for the line had been made full three quarters of an hour before the signal for wearing was made, and even the signal for wearing was not before the Vice Admiral passed the Victory; he still was disobeying of signals, because he should not have wore till the Victory wore.

Q. Do you mean to say, Sir, although it was impossible for him to have seen the signal for the line till that time, that he saw the signal for wearing out?

A. I never meant to reproach any man with disobeying a signal he had never seen; it was the Formidable's duty to have seen that signal, and I think they might have seen it if they had looked properly for it.

Admiral Montagu. I humbly presume this is not trying Admiral Keppel.

Prosecutor. I think it is proper; as the witness is going into what is called misbehaviour in me, I say it belongs to the cause as well as to me.

The Admiral. If it does not trouble the Court, I should think the Vice Admiral's whole conduct belongs to my case.

Prosecutor. Is it possible to see such a signal on board any ship directly end on, Sir?

A. When there are two ships with the same signal flying, and one considerably to windward of the other, I think no ship can be so situated as for to be unable to see it on board either the one or the other.

Court. Where was the Repeating Frigate when the signal for the line was first made?

A. I don't know exactly where she was when the Formidable first passed us, but I saw her considerably to windward of it once while the signal was flying. I did not really watch the whole period. I believe if the Formidable did not see that signal, she is the only ship in the fleet that did not see her.

Q. She was the only ship in that situation you have described.

A. I believe she was.

Court. I think you said the Formidable passed under your lee; upon your lee-quarter to leeward?

A. The Formidable passed to leeward of the Victory when the Victory was with her head to the northward towards the French fleet.

Prosecutor. That is admitted, certainly.

Court. Could you see her then in a proper posi-

tion so as to see if she had the signal out for the line flying on board of her?

A. To be sure; I saw the whole of her as she passed: the signal for the line was not flying on board of her.

Prosecutor. Did you not see it very soon after that, Sir, hoisted on board the Formidable?

A. No; I did not see it any part of the day hoisted on board the Formidable; I looked frequently at her; I had much occasion to look at her, both with the glass and without the glass, and I saw her hoist the blue flag at the mizen-peak for the ships to bear down, but I never saw the signal for the line up the whole day.

Q. Did not the Victory wear very near under the Formidable's stern and run to leeward of her?

A. I have before said the Formidable passed the Victory to leeward at no great space of time after we wore, and by edging away to cover those ships to leeward, we of course got to leeward of the Formidable; we were astern of the Formidable when we tacked; I cannot speak precisely to the distance, it was not far.

Q. At the time that blue flag was hoisted that you mentioned on board the Victory, which you say the Formidable repeated, was that not within less than half an hour after making the signal for wearing?

A. No; to the best of my remembrance it was within an hour after we had wore.

Prosecutor. The minutes of the signals will correct the time; the Court will have that before them. But suppose it was only half an hour, and I leave that to the Court to find out whether it was or no, at what distance could the Formidable then be from the Victory?

A. I really cannot answer questions upon supposition; that must depend upon the sail which the two ships carried and the different courses they steered.

Q. I would ask Admiral Campbell, whether the Formidable and some of the Vice Admiral of the Blue's division were not the last ships that came out of the action?

A. Certainly they were.

Q. Then, Sir, I should be glad to know, if you can inform the Court, the reason why the Admiral thought proper to order the Vice Admiral of the Red division to take the station of the Vice Admiral of the Blue at that time, being just after the Vice of the Blue came out of action.

A. Because not only the Vice of the Blue division, but also the centre division, those ships stationed a-stern of the Admiral, passed on and were not wore when the Admiral himself wore, and therefore they could not take their station: the Admiral, I suppose, thought it proper to have some ships there, and he had sent that message, but it never was delivered, nor ever performed.

Q. I am speaking of coming into the Admiral's wake.

A. About what time does the Vice Admiral allude to?

Q. Both times; the time when they took the station a-head, and the time when he intended them to take the station a-stern,—for ordering them to take the Vice of the Blue's station a-stern.

A. Because neither the ships of the centre division nor those of the Vice of the Blue were in a position then immediately to take it; but when the Admiral ordered the Vice of the Red to re-assume his station a-head, the greatest part of the ships were then in a condition to resume their stations, so far as appeared to the Admiral.

Q. Admiral Campbell has mentioned the orders sent by the Fox to the Formidable: I would ask Admiral Campbell, whether in the minutes kept on

on board the Victory, the hour and minute is noted of the delivery of that order?

A. Yes, I have always understood it was, and I have in one of the minutes read it myself. I understood it was in both of them, and one of them I read.

Q. The message, or part of the message, is said to be to acquaint me the Admiral was waiting. Was the Admiral waiting? had not he the same continued sail at that time that he had before that time?

A. Yes; we had the same sail from the time we set our main-top-sail after bending it; we had the same sail till eight o'clock at night.

Q. I would ask Admiral Campbell if the Victory ever laid to that afternoon?

A. No; I have answered that already; we went with the same sail.—One question seems to contradict the other question.

Q. Was it not known on board the Victory before twelve o'clock that night, that the French fleet had bore away?

A. No; it was not known till day-light, as far as I know; and it was a matter of surprize to every body to see they were gone away.

Q. Were any frigates stationed between the two fleets that night to give notice of their motions to the Admiral, as had been done upon former nights?

A. No; nor do I know any good purpose it could have answered; for had the Admiral known of the French fleet's bearing away at the time they did, I don't know any step he could have taken to have prevented it; his signals had been so ill obeyed by the Vice Admiral of the Blue during the day, I think he durst not have made any chasing signal in the night to have pursued the enemy at the risque of finding them, when he might have found half his fleet laying to windward in the morning.

Q. In the morning, Sir, you have said the signal was made for some ships to chase the three French ships. You mentioned the Duke as one; Was not the Duke a remarkable very heavy sailing ship as any in the fleet.

A. When I mentioned the Duke's signal being made, I gave the reason for it; the difficulty we found in collecting the ships after passing the French line on the preceding day, gave us good room to believe the ships were a good deal crippled in their masts and yards; we had good reason for supposing the Duke had not suffered that way, and that was the reason her signal was made.—I really don't know that an Admiral is accountable to the third in command for the reason of making one ship's signal in preference to another.

Captain SAMUEL MARSHALL called.

Captain Marshall. I beg leave to observe to the Court, I did not expect to be called, and therefore have not my papers with me.

The Admiral. Can you recollect that you saw the signal for the line of battle hoisted on board the Victory after the action while on the larboard tack?

A. In my evidence I have said to the best of my memory I did so, and it appeared so, and by my minutes I had repeated it. I think I have said that.

Q. Did you say you kept it abroad as repeated all the time I stood upon the larboard tack?

A. I think so.

Q. Did you see the Formidable while I was standing upon the larboard tack?

A. Yes.

Q. How was the Arethusa situated with respect to her?

A. I tacked on the Formidable's weather quarter.

Q. Was the signal for the line of battle then flying on board the Arethusa?

A. I think so.—Yes.

Court. It was usual for you to keep the signal out so long as the Admiral had it out?

A. Certainly, Sir.

Prosecutor. Captain Marshall has said he did not know of his being called: I should be glad to know when and by whom you received notice to attend here now? It is a plain question, and was put to an evidence of mine.

The Admiral. I will answer. I sent him word I should call him, a matter of signal being disputed. I have a right to call that gentleman once, and any one gentleman that has not been called by me before. I sent for him to prove a matter of fact.

Prosecutor. I ask that question of Captain Marshall; there is no more impropriety in it than a question put to an evidence of mine.

The Admiral. I have no objection; I have answered it.

Judge Advocate. As Captain Marshall has said he was not prepared, not knowing of his coming, I should be glad to know when and by whom he received notice to attend?

A. I received notice that the Admiral wanted me.

Court. How long ago?

A. Just now.

The Admiral. I would wish to know whether the Prosecutor admits or denies, or puts me upon proof, That the Paper signed Hugh Palliser, in the Morning Post of the 4th of November, is his?

Prosecutor. When all is gone through you may put that question.

The Admiral. I shall put it at no time but now. I beg Captain Faulknor may be called.

Prosecutor. I admit it.

The Admiral. The Accuser says he admits it.

The Honourable GEORGE FAULK NOR sworn.

Examined by the Admiral.

Q. I would ask Captain Faulknor what would have been the consequence if I had formed a line of battle instead of closing with the French fleet, as I did on the morning of the 27th?

A. That they never would have been brought to battle.

Q. What part of the French fleet did the Victory begin action with?

A. The Victory fired some shot into the ship that led the French Admiral, in the Bretagne, we began action; when I mean action, close action with the Bretagne, orders were given we should reserve the fire for the French Admiral.

Q. Was the ship's company in good order, obedient and observing that day?

A. In every respect they were, Sir.

Q. Was the center of the French fleet as we came up to them in appearance to you in any order, a regular order?

A. No; they were not in regular order; they were in sailing order, in that sort of order that is nearest a line, but not that any officer would call a line of battle that is used to form in lines of battle.

Q. Was there more French Admirals than one together?

A. There was only one French ship between the Bretagne and another Admiral; both those Admirals were three-deck ships.

Q. Did the van of the French fleet keep their wind and avoid nearing the Victory as she passed?

P p

A. They

A. They kept their wind as close as ships could possibly do in my opinion.

Q. Did they pass out of gun-shot, or how much out of gun-shot?

A. The fourth or fifth ship a-head of the Bretagne began their fire on the Victory; the first of those ships, that is, the fourth or fifth that led the Bretagne, her shots scarce reached the Victory; they fell short; the ships that were a-head of those four or five were still further off.

Q. I am charged, after I came out of action, with having stood to a great distance beyond the enemy before I wore to stand towards them again. I desire you will inform the Court whether it was practicable for me to wear sooner, and when I did wear, were any of the ships of my division able to wear with me?

A. The Victory was wore as soon after she came out of battle as was possible, I believe sooner than many of the ships.

Court. Was you damaged in your masts, sails, and rigging, when you did come out of action?

A. I do not recollect to have seen any of the Admiral's division wear at the time he did.

Court. Tell the defects in general of the Victory in her masts, sails, and rigging.

Captain Faulknor. Do you mean I should descend to trifling ropes, such as running ropes of the ship?

Court. No; in general terms.

Captain Faulknor. Do you mean I should begin with the masts?

Court. Whichever you please; masts, sails, and rigging, running rigging.

Captain Faulknor. The Victory had a large shot through the center of the main-mast, about eight feet above the quarter-deck, another shot in the main-mast in the wake of the main-yard; the mizen-mast was shot through the center with a large shot in the center about eight feet above the poop-deck; the bowsprit was shot through by the step; the main-yard was shot in the wake of the flings; the mizen-yard shot in the lower arm so as to make it necessary to cut it off immediately after we were out of battle ten or eleven feet; the gib-boom at the other end shot about three feet without the cap; the main-top-sail-yard shot in the starboard quarter, not cut directly through, but grazed in what we call the Quarters, and two of her lower deck mid-ship starboard ports were very much shot.

Q. How was the standing and running rigging?

A. The starboard fore-top sheet and bowlings, the fore-top-mast-stay, the collar of the fore-stay, one of the gammonings of the bowsprit, six fore-shrouds, two fore gammonings, the gib-blocks, one at the yard and one at the mast-head, the fore-top-sail sheet, the main-top-mast-stay, the main-preventer stay, two fore-top-mast back-stays, seven main shrouds; five main-top-mast shrouds, the main-trusses shot off, the fore-mizen shroud, main-mizen top-mast back-stays, several trusses, bowlings, buntlings, and top-sail lifts, particularly our main-top-sail; the rigging in general was shot, as any sea-officer will suppose must be the case.

Court. Your top-sails were very much shot I suppose?

A. Yes, particularly the main-top-sail.

The Admiral. Had you any reason to believe from any thing you saw, that the Vice Admiral of the Blue was exposed to be cut off?

A. No.

Q. Do you recollect when the signal for battle was hauled down?

A. I gave the orders for that signal being hauled down, having received them from Admiral Campbell while the Victory was upon her starboard tack; it was not reported to me that it was hauled down, nor did I look myself to see it was hauled down,

and I do not presume to give information to the Court when it was hauled down.

Court. What time did you receive those orders from Admiral Campbell?

A. I received orders for the signal to be hauled down just before we wore.

Q. When was that?

A. About three quarters after one or something later.

Court. At that time you imagined your commands were obeyed, or you would have repeated them?

A. Certainly. I was much employed in the preparation to wear the Victory, and it might take my mind off that particular business.

The Admiral. Was the signal made for the line immediately after the Victory got upon the larboard tack?

A. Directly.

Q. Was it kept flying till she wore upon the starboard tack again?

A. It was.

Q. Were any ships got into their stations in the line before the Victory did wear to the starboard tack again conformable to that signal?

A. The ships that should have led the Victory was not a-head of her, some of those that were a-stern might probably be near their stations to follow the Victory.

Q. I am charged with having shortened sail after I wore to stand towards the enemy instead of advancing towards them; I desire to know if I had ships enough collected with me to admit of my advancing faster than I did?

A. No.

Q. Captain Faulknor remembers the main-top-mast being unbent.

A. Perfectly well, Sir.

Q. Did not that enable the ships to close up the faster with me, and was the main-top-sail fit for service?

A. The main-top-sail was not fit for service, and by its being unbent, the ships we left to the southward a-stern of us certainly had it more in their power to follow us, to approach us, or draw nearer to us.

Q. Was that top-sail being unbent of any public detriment to the business of that moment?

A. It was not; it certainly gave the ships an opportunity to get a-head of us that had it in their power.

Q. Had any of the ships that in their power, even with their top-sails unbent, to get a-head of us, of our division, or of the Vice Admiral of the Blue's division, before we wore to the southward again?

A. I have already stated none had got a-head of the Victory, and I should therefore presume none had it in their power; as the signal for the line of battle was out, every man would go to his post as soon as possible.

Q. Did your people replace the main-top-sail that was unbent, soon and in a seaman-like manner in point of expedition?

A. The main-top-sail was replaced in little more than half an hour.

Q. After the main-top-sail was replaced, did not you and all the officers, notwithstanding the damages you have stated to the Court, think the Victory was fit for action again?

A. By the time the main-top-sail was replaced, the rigging was replaced in such a manner as is done after an action, the powder in the different magazines replaced, and she was then as fit for action as she could be.

Q. Did you see the French fleet wear and begin to form in a line upon the starboard tack?

A. I did.

Q. Had

Q. Had I at that time a sufficient force collected with me to have stood on, and interrupted their forming?

A. I am sure you had not.

Q. What time did I wear to the southward?

A. A little past three.

Q. Did I keep the signal for the line of battle flying after being upon the starboard tack, to collect in forming the ships?

A. Yes, Sir;—the signal was not hauled down.

Q. What fail did I carry upon the starboard tack?

A. After the main-top fail was bent, double reefed top-fails, fore-fail, mizen, and mizen stay-fail.

Q. Do you recollect Sir Robert Harland coming into the rear with his division, while on the starboard tack?

A. I do.

Q. Do you recollect my ordering Sir Robert Harland to leave the rear, and form a-head; and at what time, and by what ship?

A. About five o'clock, the signal was made, (when I say about, I don't go to five minutes before, or five minutes after) for the Milford and Fox to come within hail; the Milford came up upon the Victory's lee-quarter, and I hailed him by order of the Admiral, and directed him to go to Sir Robert Harland, and tell Sir Robert Harland, it was the Admiral's direction, that he should make fail and form a-head, and carry a preft-up fail for that service.

Q. Do you recollect at the same time, my ordering the Fox to go to the Vice Admiral of the Blue?

A. I recollect the Fox's coming upon the other quarter of the Victory, the starboard-quarter, and she was hailed by somebody in the stern gallery; the message I did not hear given; but I observed the Fox to immediately make fail to windward upon his larboard tack, keeping his wind close, and carrying a preft-up fail.

Court. Was that at the time you was employed in hailing the Milford?

A. It was not, Sir.

Q. How long afterwards might it be?

A. It appears upon recollection, to be from five to seven minutes; I had not a stop-watch in hand to ascertain moments.

Q. The two ships signals were thrown out together?

A. They were, Sir; the position of the Milford brought her the soonest up; about five or seven minutes after the Fox came, after the Milford was dispatched.

Court. Do you recollect what service the Fox was sent upon?

A. It was the language of the Victory's quarter deck that she was sent to the Vice Admiral of the Blue; that I heard from more than one mouth.

Q. Did you hear that message, Sir?

A. I have stated, I did not hear that message; but the report of the quarter deck of the Victory; I cannot swear to hearing the message, that I said before.

The Admiral. Where was the Vice Admiral of the Blue at that time, Sir?

A. From two to three points abaft the Victory's weather-beam; I should suppose about two miles to the windward.

The Court then adjourned till the next morning, at Ten.

*Wednesday, Twenty-fourth Day's Proceedings,
February 3d 1779.*

Captain FAULKNER called a second time.

The last two Questions and Answers read, Farther examined by the Admiral.

Q. Did you observe the Formidable's fore-top sail unbent in the afternoon?

A. I did.

Q. How long was it so?

A. Near or quite four hours.

Q. Did you observe any other damages in that ship?

A. The Formidable had all her masts and yards in their places, and none shot away that I saw.

Q. Do you know that I had given up the design of re-attacking the enemy that afternoon?

A. Quite otherwise; in my opinion you did mean to attack them that afternoon.

Q. Did you observe any effort on board the Formidable to obey the signals after the Fox went to her?

A. I never did observe any efforts made on board the Formidable, either before the Fox went to her, or afterwards.

Court. Efforts to do what?

A. To obey the signals.

Q. Did you, during the afternoon, at any time see the signal for the line of battle repeated on board the Formidable?

A. I did not; I saw it repeated on board the Arethusa, the repeating ship, who was then upon the Formidable's lee-bow near her.

Q. At the time as you observed the Formidable in the afternoon, was she so well up as for you to discern any of her lee-ports distinctly, one from the other?

A. I looked at the Formidable many times in the course of that afternoon, with my glass, and could have counted the guns, if I had been asked to have done it at any time.

Q. In the evening of the 27th, what fail did I establish for the night?

A. Two treble-reefed top-fails, that is, the fore and main-top fail, treble-reefed fore-fail, mizen, and mizen-stay fail, mizen-top fail handed at the usual time of doing it in the fleet, which was before the day closed.

Q. Was the distinguishing lights kept burning all night?

A. I gave orders that every socket of those lights should have a candle in them; it had been the custom to have one short, we used to burn three, that night we burnt four in each lanthorn, added to the common lights of the Admiral commanding in chief; we carried an exceeding good light at the bowsprit end, which I caused to be looked at several times.

Q. Was there any increase of fail during the whole night?

A. None, no alteration.

Q. Did you see the French fleet bear away, and go off in the night?

A. I did not; between ten and eleven it was reported to me that a rocket had been thrown into the air, upon which I came out of Admiral Campbell's cabin, then the French fleet seemed to be in the same position they were before, and different lights in the ships; before that I was on the Victory's quarter-deck four or five times during the middle watch, and still saw lights in different places to leeward.

Q. In the morning of the 28th what part of the French fleet were seen?

A. I neither saw nor heard of more than three fail

fail under our lee; the northermost of which I took to be a large line of battle ship, the southermost a very large frigate, and a small frigate between them, at pretty near equal distances from each other.

Q. Did I send any ships to chase them?

A. The signal was made for the Prince George, Bienfaitant, and Elizabeth to chase to the N. E. they bore then from us, rather to the northward of the east.

Q. Was it not soon after discovered that the Prince George and Elizabeth were too much crippled for chasing?

A. The Prince George and Elizabeth hailed the Victory, and accounted to the Admiral for their not carrying more sail; the Prince George complained, I think, of her fore-mast, and the Elizabeth of her top-mast.

Q. If I had chased with the fleet to the eastward, was there any probability of getting up with the French fleet before they reached the port of Brest, the wind and weather as it was, and the ships crippled as they were?

A. Not the smallest; if there had, I am sure the Admiral would have pursued them.

Q. When the fleet had brought to, with their heads to the northward, how many ships made signals for setting up their rigging?

A. I did not perfectly count them, but I should suppose from ten to fifteen at the least.

Q. Captain Faulknor. You have heard all the articles of the charge read, and therefore I desire you will state to the Court any instance, if you saw or know of any such, in which I negligently performed any part of my duty upon the 27th and 28th of July?

A. I cannot state to this Court any instance wherein the Admiral did not conduct himself like a great and able sea-officer.

Q. I would ask Captain Faulknor whether I did not send him with my public dispatches to London?

A. The Admiral did.

Q. Do you recollect whether I entrusted you with any message to the Earl of Sandwich with my public letter?

A. I do, Sir, and this is it; if the Court will give me leave I will read it.

Court. Do.

"Give my compliments to Lord Sandwich, and tell him I have more to say to him than I think is proper to put in my public letter; and if it is his Lordship's pleasure to ask me any question, I am ready to wait on him." This message I repeated twice to Lord Sandwich.

No Cross Examination.

Captain GEORGE STONEY, late First Lieutenant of the Victory, sworn.

Examined by the Admiral.

Q. Had you the morning watch on the 27th of July?

A. I had, Sir.

Q. Do you recollect the signal being made for several ships of the Vice Admiral of the Blue's division to chase to windward?

A. I do.

Q. Do you recollect at that time how the Vice Admiral of the Blue bore from the Victory?

A. About a point, or a point and an half, before the lee-beam.

Q. And how far?

A. And about four miles distance.

Q. What sail was the Formidable under at that time?

A. To the best of my recollection, fore sail, treble-reef top-sail, mizen stay-sail, and mizen.

Q. What sail had the Victory then set at the time?

A. Courses, treble-reefed top-sails, mizen, and mizen stay-sail, to the best of my recollection.

Q. What watch had you in the evening of the 27th or morning of the 28th?

A. I had the first watch on the night; I am now speaking to the morning of the 28th.

Q. What sail was the Victory under during your watch?

A. Fore-sail, treble-reefed fore and main-top sails; that was the same during the greatest part of the watch, till the mizen sheet was hauled aft; she scarcely steered before for want of after-sail: I judge that to have been about seven bells.

Q. Was there any other alteration made in the sails during your watch?

A. None, Sir.

Q. Did your top and other distinguishing lights burn well?

A. They did, the lanthorn being frequently wiped and cleaned for the purpose.

Q. Did you see any rockets thrown from the French fleet into the air?

A. I did, two.

Q. What o'clock was that?

A. Nearly eleven, rather before than after.

Q. Did not you see several lights to leeward after that; I don't mean top-lights, but dispersed lights?

A. I saw some flashes that I took for squibs also.

No Cross Examination.

Lieutenant ROBERT CALDER sworn.

Examined by the Admiral.

Mr. Calder. Do you remember the Fox being sent with a message to the Vice Admiral of the Blue in the afternoon of the 27th of July.

A. I do, Sir.

Q. Can you say at what time of the day it was?

A. From the height of the sun, Sir, I should suppose it to be between four and five; I did not observe by my watch, as I had it not about me.

Q. I will only ask Mr. Calder relative to his people and quarter, whether they were not all under the best order, obedience, and alertness possible?

A. They were so.

No Cross Examination.

Captain GEORGE BERKLEY.

Examined by the Admiral.

Q. I would ask you if you remember the time of day the Fox was sent to the Formidable upon the 27th of July in the afternoon?

A. I came upon deck and asked the Quartermaster what o'clock it was, he answered me it was after one bell, or almost five o'clock; I was then shewed the Fox standing to windward towards the Formidable with a message, as I was told, from the Admiral.

Q. You was not told what that message was?

A. Yes, Sir, I was.

Q. Was it by the watch?

A. No, no particular watch, it was all hands.

Q. What watch had you the night of the 27th?

A. The middle.

Q. Did you see the lights of the French fleet during your watch?

A. The officer that I relieved shewed me the French lights, as he said, about three points abaft the beam; I kept my eye upon them the whole watch; when day-light broke I only perceived two ships where the lights had appeared, and a third a good way a-stern of them.

Q. What

Q. What sail was the Victory under during your watch?

A. Treeble-reefed fore and main-top-sail, fore-sail and mizen, I believe the mizen stay-sail, but I am not sure of that; her mizen top-sail was taken in, in order to shew the lights in the main-top; she carried her helm a-lee almost the whole watch.

Q. Were the distinguishing lights kept burning clear and well?

A. They were, Sir, particularly well that night; there were more lights ordered in them than there had been any night before; and I particularly went aft to see that the stern-lights were kept in proper order.

Q. Where was you quartered?

A. Upon the middle-deck forwards.

Q. Was the people in good order, obedient, and alert in every shape, and capable of performing every matter they were employed in?

A. They were, Sir, particularly so, more so than ever I saw people in any ship I have sailed in.

No Cross-Examination.

Sir JACOB WHEATE, Lieutenant of the Victory, sworn.

Examined by the Admiral.

Q. I would ask Sir Jacob Wheate if he recollects my sending the Fox to the Vice Admiral of the Blue in the afternoon of the 27th, and at what time it was?

A. I perfectly recollect standing by the Admiral, upon the starboard-side of the quarter-deck, when he ordered a frigate to be sent to Sir Hugh Palliser, to tell him he only waited for him and his division's coming to renew the action.

Q. Does Sir Jacob recollect the hour the frigate went?

A. I cannot speak positively to ten minutes or a quarter of an hour, but I am certain it was about five o'clock.

Q. Where was you quartered then?

A. On the fore-part of the main-deck.

Q. Was not the people under your command orderly, alert, and temperate, and did not they give you great satisfaction?

A. Perfectly so.

No Cross Examination.

Sir JOHN LINDSAY, Knight, sworn.

Examined by the Admiral.

Q. I would ask Sir John Lindsay from my first seeing the French fleet to the moment they were brought to action, did they shew any intention of coming to action, or did they always avoid it?

A. On the close of the evening of the 23d they got about a dozen ships formed, they then stood towards the British fleet, passed to leeward, and next morning we saw them to windward, they were then forming their line of battle; the Admiral made the signal for a general chase; if they had any intention of giving battle they could not have suffered our separating two of their capital ships from them, and from the whole of the time afterwards they carried a pressed sail, endeavouring to avoid us till the afternoon of the 27th.

Q. Did I do my utmost endeavours as an officer to bring them to action during those days?

A. The Admiral carried as much sail as the keeping the fleet in a connected body would admit of, and if he had continued in a line of battle they would in a very short time have got out of sight of us from the superiority of sailing.

Q. I would ask you, Sir John Lindsay, had you commanded a British fleet in the situation the French was, in respect of the English fleet, upon the 24th, 25th, and 26th of July, would you have hesitated a moment to have led it down to battle upon account of the wind or weather during any part of those days?

A. I think an officer that would have hesitated an instant, would have been unworthy of any command in the British fleet.

Q. Do you remember, Sir, a signal being made early in the morning of the 27th of July for several ships of the Vice Admiral of the Blue's division to chase to windward?

A. At this distance of time I cannot recollect exactly whether I saw the signal or not; but I remember such signal having been made.

Q. Was there at that time any greater indication of the French fleet designing to come to action than on the preceding days?

A. There was not.

Q. Do you recollect the position of the Vice Admiral of the Blue and his division at that time when the signal was made?

A. I cannot say the exact position of the Vice Admiral of the Blue's division just at that time, but early in the morning they were a considerable distance to leeward.

Q. What in your judgment was the object of that signal, and do you think it was a proper one under the circumstances in which it was made?

A. It appeared to me to be with an intention for bringing up the leeward ships to close with the center-division; and if it had not been made I apprehend a great part of that division would not have come into action at all.

Q. What, in your opinion, would have been the consequence if I had formed the line of battle instead of bringing up the leewardmost ships by signal to chase?

A. As the French fleet were constantly avoiding us it might have enabled them to escape entirely; and I am fully satisfied we should not have exchanged a shot with them that day.

Q. Did you see the French fleet getting upon the larboard tack, just before the action began?

A. There was a thick squall which intercepted them from our sight for some time; a short time before the action began it cleared up, and I then saw them in the manoeuvre of chacing from one tack to the other.

Q. Was not our getting within reach of the enemy very sudden and unexpected from a shift of wind?

A. After we had got upon the starboard tack the wind changed two points, which enabled us to lay up for them, as it appeared to me they had tacked their whole fleet together; their rear ships (of the enemy) were obliged to bear down to get into the wake of their van that they might form a line of battle; it was so unexpected, that I had just got my long-boat cut away from the side before the enemy began to fire upon me.

Q. What would have been the consequence if I had formed the line of battle at this time?

A. It would have thrown the fleet into such confusion that, if the enemy had bore down to the attack, it might have been attended with fatal consequences.

Q. Sir John Lindsay, as I am charged with having advanced to the enemy, and making the signal for battle without having formed the line, I desire you will inform the Court if you think I was justifiable in doing so under the circumstances you have stated?

A. There was no alternative; you must either advance and attack the enemy without forming a

Qq

line

ne of battle, or not attack at all; to me it was a very animating fight, and it appeared bold, daring, and becoming of the character of a brave seaman who felt his superiority over his enemy he was accustomed to beat, and the success justified the measure, for it threw the enemy into such confusion, that I found two of the French Admirals close together, which could not have been their stations in the line of battle, and I fired upon three ships abreast of each other.

Q. Did I make the signal for the line of battle as soon as I had wore, after passing the rear of the French fleet?

A. As soon as the Victory got upon the larboard tack the signal for the line of battle was hoisted.

Q. I am charged with having stood to a great distance towards the enemy before I wore to stand towards them again, I desire to know of you, who must be able to know it, as being, I believe, the first ship that wore after me, whether the fact be true?

A. The Admiral wore before any other ship was ready or able to follow him; my rigging was so much cut that I was obliged to pass to wear under his stern; it appeared to me to be done with great expedition.

Q. Did I make the signal for the line of battle as soon as I had wore, after passing the rear of the enemy?

A. As soon as the Victory got upon the larboard tack the signal for the line of battle was hoisted.

Q. Was that the properest signal I could make to collect the fleet together?

A. I know of no signal so proper; it is that on which every officer piques himself in paying so prompt an obedience to.

Q. I am charged with having shortened sail instead of advancing to the enemy, I desire to know if I had a sufficient force collected to have admitted of my advancing to the enemy faster than I did?

A. I don't remember above three or four ships that were close to the Victory; the Vice Admiral of the Red was advancing, but it does not appear to me it was with an adequate force for to attack the enemy.

Q. Had I at any time, while I was standing upon the larboard tack, a sufficient force collected to renew the fight?

A. There was not.

Q. Did you see the French fleet wear and begin to form their line upon the starboard tack?

A. They did.

Q. Had I a sufficient force collected at this time to have prevented their forming?

A. If the Red division had advanced with the ships nigh the Admiral, they must have suffered a great deal before the others could have come up to their relief, therefore I think it would have been highly improper to have attacked it.

Q. I am charged with having wore at this time, and made sail directly from the enemy, I desire you will explain this manoeuvre to the Court.

A. The French when first they drew out their line stood for the center division, but the Vice Admiral of the Red, placing himself between the Admiral and the enemy, obliged them to relinquish their intention of attacking the fleet; they then bore away, and pointed for some of our disabled ships that were to leeward; a short time after the Admiral made the signal for wearing, and bore down under an easy sail to support those ships.

Q. Did I make every necessary signal to form the line and collect the fleet while upon the starboard tack?

A. Every signal I think that could be made upon the occasion.

Q. What sail did I carry?

A. The top-sail, the fore-sail I am not certain of;

I know the Prince George was only under her top sails.

Q. Was not the sail I carried necessary for the protection of the disabled ships, and could the sail I carried possibly have prevented the Vice Admiral of the Blue from coming into the line?

A. If the Victory had carried less sail, it would have been difficult for the other ships to have kept under command, and preserved their stations in the line of battle; and it does not appear to me that it could prevent any ship from getting into their station.

Admiral Montagu. You said, in answer to the question before, That the Prince George had only her top-sails; were they reefed?

A. They were reefed; double reefed, and the fore-top-sail not hoisted.

Q. Did not the easy sail I carried permit the French fleet to range up with me under their top-sails?

A. It did.

Q. Had this manoeuvre, as you have stated it, the least appearance of a flight?

A. Not the least.

Q. Could not the French fleet have attacked the British fleet at any time they had thought proper?

A. It was in their power to do so all the afternoon.

Q. Did you see the Vice Admiral of the Red leave the rear to form a-head?

A. I did.

Q. At what distance was the Vice Admiral of the Blue from his station at this time, and how did he bear of you?

A. I cannot tell, till a little after; at that time I was not in my station, having placed myself a-head of the Victory, expecting an inverted line would have been formed; upon the Vice Admiral of the Red going a-head my signal as well as also the Bienfaisant's were made to resume our proper stations; after I had got a-stern of the Admiral I observed the Vice Admiral of the Blue with his division about two miles to windward, a point abaft our weather-beam.

Q. What course must the Vice Admiral of the Blue have steered to come into his station?

A. I should suppose nearly afore the wind.

Q. Did anything appear to you to prevent his bearing down?

A. He had then his fore-top-sail unbent, but it appeared to me he was capable of making more sail.

Q. Did he ever make any visible effort to come into the line?

A. I saw none.

Q. How long did you observe his fore-top-sail unbent?

A. It was unbent, I apprehend, about half an hour after three or four o'clock, and continued so until after sun-set.

Q. Did you ever see him repeat the signal for the line of battle?

A. I never saw it on board the Formidable.

Q. Can you assign any reason why the French Fleet were not re-attacked that afternoon?

A. I suppose if the Vice Admiral of the Blue had led down his division into the line of battle they would have been re-attacked.

Q. You think then I should have renewed the battle that afternoon, if the Vice Admiral of the Blue had led his division down?

A. I certainly do.

Q. You have heard read the fifth Article, by which I am charged with not having pursued the French fleet on the morning of the 28th; I beg you will inform the Court of all you know concerning that matter?

A. The

A. The Prince George's signal, the Elizabeth, Bienfaisant and Duke's, were made to chase the three ships that were in sight; the Prince George was so much shattered in her masts, she was not able to make sail, therefore their signals were made to call them in; the whole fleet appearing so much crippled, that a chase could not have been continued with any possible success.

Q. The whole fleet being so crippled after the action of the 27th, was there any probability of getting up with the French fleet before they had reached the port of Brest, the wind and weather as it was?

A. There was not the least probability, but it might have been attended with great danger to have carried the fleet upon a lee shore in the state they then were.

Q. Sir John Lindsay, your situation, Sir, being very near me, which you preserved during the whole time I was in pursuit of the enemy, and during the day of action, which gave you an opportunity of seeing objects in nearly the same point of view with myself, I desire you will state to the Court any instance, if you saw or know of any such, in which I negligently performed any part of my duty on the 27th and 28th of July.

A. I can state no such instance, because the Admiral fulfilled his duty in every part. I had the honour of serving under his command last war, and had such strong proof of his bravery, ability, and knowledge in his profession, as pointed him out to me as one of the greatest sea-officers this country has ever produced, and the whole of his conduct during his late command has further convinced me that my former opinion was just.

Cross Examination by the PROSECUTOR.

Q. Sir John Lindsay has mentioned the time when the ships chased in the morning, I should be glad to ask Sir John if those ships had been permitted to stay with their Admiral, whether they would not have gone into action with their Admiral as he did, and whether if they had done so, they would not have supported each other, and have done the service better, and been less damaged themselves?

A. Several of the ships whose signals were made were to leeward of the Vice Admiral, therefore, if the signal had been made, they would not have had the advantage at the change of wind, therefore could not, I apprehend, have gone into action at all.

Q. Can Sir John Lindsay name any one single ship that was to leeward except the Ocean?

A. I cannot tell the name of any ship, but they were all a-stern, therefore consequently would not have received the advantage from the change of wind; they were a-stern of the Vice Admiral when the signal was made.

Q. Does Sir John Lindsay think at the distance he was at he could judge better of the different stations of the ships than the Captains of the divisions themselves?

A. I certainly cannot.

Q. Does Sir John know the Ocean was the sternmost and leeward-most of the whole?

A. I cannot recollect at this distance of time.

Q. Does Sir John know when the Ocean fetched into action with the French Admiral?

A. I do not.

Q. I will only ask Sir John as matter of opinion, if the stern-most and leeward-most of the ships which was not a chasing ship did fetch into action with the French Admiral, could not the whole have done the same, if they had not chased as the Formidable likewise did?

A. If the leeward-most ship did fetch into action as in the manner stated, I suppose they would.

Q. Sir John Lindsay seems to have taken a good deal of notice of the motions of the French immediately after the action; I will ask Sir John if he remembers to have taken notice of the Formidable immediately after the firing ceased?

A. I did not see the Formidable till she was passing to leeward of the Victory.

Q. I understood Sir John that he took notice of the first of the ships that began to draw out of the body of the French fleet; whether he did not observe that these first ships first hauled their wind and steered for two of our ships? He perhaps did not know the Formidable and Worcester were two of our ships that were lying close a-stern of the rear-most of the French fleet.

A. I did not.

Q. Sir John don't know that the Formidable did wear close to the rear of the French line.

A. I did not.

Q. I ask Sir John, that if the Admiral had wore himself within gun-shot of the sternmost of the enemy's line, whether you in the Prince George, and, as you believe, all the rest of the ships would not have done the same?

A. My rigging was so much cut that I could not wear at the time the Admiral did, and as the other ships did not follow him, I suppose they were in the like situation.

Q. Does Sir John suppose a ship is incapable of wearing that has all her masts and yards standing and sails set, notwithstanding some of the running rigging may be cut, in moderate weather?

A. Without their braces and bowlines I don't see how a ship is to wear and get upon a wind in the other tack.

President. Do you judge it would have been prudent for the Admiral to have wore, supposing he had been capable of it, if the ships that followed him were still engaged?

A. I should have thought it highly imprudent, as it would have thrown the ships into confusion.

Court. If the Admiral could have wore, would it have been prudent so to do while the ships that were following were still engaging?

A. I should think it would have been highly imprudent, as it must have thrown the ships behind into confusion and run the risque of getting aboard each other.

Prosecutor. If the ships that remained behind had continued to stay in action upon his having done so, would there have been any risque in it?

A. There would have been no risque if they had wore before, but otherwise I think there would have been a great deal.

Q. If they could have staid in action when they wore upon different tacks?

A. No; not unless they had wore and got upon the same tack with the enemy.

Admiral Arbuthnot. Then every ship must have been raked?

A. Certainly.

Q. Would it have been like an officer to have wore with the ships a-stern engaging?

A. Certainly not.

Prosecutor. With regard to risque, is not the sea wide enough for ten or twenty ships meeting to go clear of one another, supposing one set of them lays to.

A. I have observed, Sir, in all the manœuvres of a fleet, when they had their sails and rigging entire and in good order, when they get in confusion together there is great risque then of falling aboard, and it requires the utmost attention of an officer to prevent those accidents happening, and it cannot be supposed that ships after coming out of action can be worked with that nicety as others can.

Q. If

Q. If Sir John had been coming down the French line, and had seen the rear-most of the enemy re-attacked by the ships that had passed by him, would not he have run the risque, for that short time, of wearing in order to have got upon the same tack to continue the engagement?

Sir John Lindsay. Be so good as to read it again, I cannot say I understand it rightly.

[It was read.]

Prosecutor. But suppose the case.

A. I cannot suppose a case I do not understand.

Prosecutor. Then let it alone.—Let it stand that Sir John does not understand the question.

Sir John Lindsay. Be so good as to read it again, because I do not comprehend it.

[It was read again.]

A. I understand it now; I don't suppose such a case could exist; for no officer would wear and attack a ship a-head of me, and I standing upon the other tack; but if I found a ship in that situation, I certainly would wear and endeavour to attack at all risques.

Prosecutor. I would ask if the ship that received the most damage in her rigging and sails, or at least as much as any other ship, was able to wear immediately after she came out of action, why might not all the rest have done so?

A. That must depend greatly upon the nature of the damages she receives; if the braces and bowlings are intire, the ship may be wore; but I do not see how a ship is to get upon a wind upon the other tack without them.

Q. But if the ship that had all her braces and bowlings, except one or two cut, was able to run up single ropes, or by making use of other expedients, was enabled to do it in the manner I have mentioned, might not any of the other ships have done so too?

A. I should suppose what one man can do another may.

Q. I would ask Sir John, if the last ship that came out of the action, was not the Vice Admiral of the Blue, and some of his division?

A. I believe they were.

Q. Does Sir John know that they suffered more than any other equal number of ships in the fleet, both in men killed, and damages to the rigging and sails?

A. I can only speak to my own observation; they did not appear to be more so than the other ships of the fleet; and, I believe, the Prince George suffered more, or as much as any one ship of the fleet.

Q. I will only ask Sir John, if the latest ships that came out of action, and had received the most damage, could be expected to be in a condition to take their stations in a close line, so soon as the other ships that had been longer out of action, and less engaged?

A. If they were more damaged, they certainly could not.

Q. If they were equally, and had come much later out of action?

A. They could not.

Q. I would ask Sir John, what he supposes might be the Admiral's reason for ordering the Vice Admiral of the Red to take the station of the Vice Admiral of the Blue; does he suppose it was because the Vice Admiral of the Blue's division was just then come out of action?

A. The reason appeared to me, that they had not suffered so much, and therefore placed those ships between him and the enemy, as no ships were there.

Q. I understand, Sir John, that the whole fleet were beyond the Admiral, and left him next to the enemy, was that the state of the case?

A. That was the case, a little before the Admiral wore upon the starboard tack.

Q. Then whilst the Red division were lying by order in the station of the Vice Admiral of the Blue's division, could any ship of that division go into their proper station, if they had been able to do so whilst those ships were laying there?

A. They could not.

Q. Sir John has mentioned his noticing the Formidable laying to windward with her fore-top-sail unbent, and that she was a point abaft the Prince George's beam; did Sir John set her by the compass?

A. I did not.

Q. Does Sir John know her condition at that time, or the reason her fore-top-sail had not been set?

A. I know no reason for it.

Q. Upon the question relating to chasing, Sir John mentioned the whole fleet being crippled, do you know the whole fleet was crippled?

A. They appeared so to me; I only had a cursory view of the fleet; but what I mean, is the greatest part of them.

Q. Sir John was asked if he did not think the Admiral meant to renew the engagement in that afternoon; I should be glad to ask Sir John if he thought that the Admiral intended to renew the engagement so late as at seven or eight o'clock in the evening, as the risque of a night engagement, and with the ships that last came out of the engagement, and had been most damaged in preference to those that had been the least damaged, and the longest out of it?

A. I certainly thought the Admiral intended to renew the engagement when I got a-stern in my station in the afternoon; but I don't know I can give any opinion with respect to seven or eight o'clock; I should rather apprehend he would not.

Captain WINDSOR of the Fox Frigate called in.

The Admiral. I would ask Captain Windsor, when he received orders from me to go to the Formidable, whether the Fox was not obliged to keep upon the contrary tack, and whether she could fetch the Formidable?

A. She was obliged to be upon the other tack, and could not fetch the Formidable.

Q. Did you carry a great deal of sail?

A. I had courses and top-gallant-sail set, and main-top-mast stay-sail.

Q. In the former part of your evidence, you mentioned the Formidable having cheered the Fox, and the Fox having returned the cheer; I beg to know if you recollect whether the Formidable returned you any cheer after you had returned her cheer?

A. To the best of my recollection she did.

Captain Duncan. When you was upon the larboard tack, going towards the Formidable, did you keep a close wind?

A. The Fox was close hauled upon a wind.

Admiral M——. Do you know what part of the Formidable that cheer was returned from the last that was given you?

A. As near as I can remember, the fore-castle.

Prosecutor. Captain Windsor has not said from what part of the Formidable the first cheer was given?

A. From the main and mizen shrouds.

No Cross Examination.

ALBEMARLE BERTIE, Lieutenant of the Fox.

Q. Does Lieutenant Bertie recollect the Fox's being called to from the Victory in the afternoon of the 27th of July?

A. I did

A. I do.

Q. Do you recollect the message that was given Captain Windsor from the Victory, for the Vice Admiral of the Blue?

A. I do.

Q. What was the purport of it?

A. The Admiral ordered Captain Windsor to go to Sir Hugh Palliser, to let him know that it was his orders, that he should come down into the Victory's wake with his division, and that he waited for that to renew the Action.

Q. What hour of the day was this?

A. I did not minute the time, but I think it was between five and six.

Q. Do you know whether the message was delivered to the Vice Admiral?

A. Captain Windsor delivered it twice punctually: not content with that, he ordered me to take the trumpet, which I did, and repeated it twice more; the answer each time was from the stern gallery, Sir, I understand you perfectly.

Q. The message you delivered was to the exact purport of the directions that I gave?

A. Word for word, to the best of my recollection.

Q. In standing from the Victory, was you able to fetch the Formidable?

A. No; the Formidable was too far upon the weather quarter, we were obliged to tack.

Q. Had you much sail set?

A. A prest-up sail, the top-gallant sails were out; and I remember we stood by the hallyards and lee sheets.

Q. How fast do you think you went?

A. I don't exactly recollect, but she had very fresh way through the water; I should suppose from six to eight knots.

Q. How long might you be a going from the Victory to the Formidable?

A. I think about half an hour.

Court. I think I heard you say you heard a voice from the gallery, I understand you perfectly?

A. Yes, Sir.

Q. Who do you apprehend it came from, Sir, that gave the answer from the Formidable's stern gallery?

A. I fancy it was Sir Hugh Palliser; I am not certain.

Court. Did you observe any manœuvre different on board the Formidable, after you had received that answer?

A. She manned ship to cheer us, she turned her hands up the shrouds.

Q. Was there any alteration in her sail, to make fail, or shorten sail?

A. I don't recollect there was.

Q. Was she under sail, or laying to at that time?

A. I think her fore-sail was set; I know there were hands upon each top, and upon the top sail-yard; I think she was bending her top-sails.

Q. You mentioned the hour, between five and six, was that the time when the message was received, or the message delivered?

A. When it was received.

Mr. GEORGE WILLIAM COURTNEY, a young Midshipman of the Fox, between sixteen or seventeen years of age.

Court. Do you know the nature of an oath?

A. Yes.

[He was then sworn.]

The Admiral. I would ask Mr. Courtney, whether he had not the charge of a prize (to bring her into port) taken by the Fox?

A. Yes.

Q. Was you on board of the Fox when the English and French Fleets came to action?

A. I was, Sir.

Q. Do you remember the Fox's being hailed by the Victory on the 27th in the afternoon?

A. I do.

Q. Do you remember at what time it was?

A. Between five and six.

Q. Do you recollect what the message was, or orders, I sent to the Formidable?

A. You desired Captain Windsor to go under Sir Hugh Palliser's stern, and to acquaint him that you only waited for Sir Hugh Palliser to bear down into your wake, to renew the engagement.

Q. Was that the exact message delivered by the Fox to Sir Hugh Palliser?

A. Yes.

Q. Does Mr. Courtney know whether there was any answer given to it?

A. There was, but I do not recollect the words.

No Cross Examination.

[The Admiral desired to know if the letter in the News-paper might be read, which was admitted by Sir Hugh Palliser yesterday to be his.]

Prosecutor. Objected, and said, If the Admiral has any question to ask me in any other place, I am ready to answer him.

The Admiral. I shall insist upon nothing; the Court are the best judges.

As to what Sir Hugh has said, he shall answer. I do promise before this Court, I never will call upon him as a private man; never.

Prosecutor. As for a News-paper in this place, I think it should not be admitted. If the Admiral has any thing else to say to me upon that subject, in any other place that is proper, I will answer him, but not here.

The Admiral. I desire to have it entered, that he objects to its being read, and I have done.

Prosecutor. With my words attending that objection.

Court. Those words cannot be entered, they are not proper to be entered.

The Admiral. There is one thing I must observe, which is, he called for my letter wrote to the Admiralty, and his letter where he accused me; he has wrote to all the ladies and gentlemen now hearing me, and told his story, which probably could never have been so well answered, if I had not been brought before you, gentlemen, and now he refuses that to be read.

Court. There will be no end if we go into disputes.

Captain MAITLAND of the Elizabeth sworn.

Examined by the Admiral.

The Admiral. Does Captain Maitland know what time it was the French Fleet was first perceived; what day of the month was it the French Fleet was first seen?

A. We saw them on board the Elizabeth the 23d of July, between eleven and twelve o'clock.

Q. Were they seen the next day?

A. Yes.

Q. And what was their position in regard to the English Fleet?

A. Do you mean the next morning.

Q. Yes.

A. I think the Arethusa made the signal for them about six o'clock; we did not see them till about that time, it was very hazy.

Q. Was it in their power to have come down to the English Fleet and engaged them?

A. There is no doubt of that, for they were right to windward.

R r

Q. Did

Q. Did I use every means as an officer, to get up with and bring them to battle, from that time to the 27th, when they were brought to battle?

A. To the best of my judgment, Sir, you did.

Q. Do you remember that I made a signal to form a line of battle on the 24th, in the afternoon?

A. I do.

Q. Had I pursued the French in that order, would it have been possible to have preserved our nearness to them?

A. No; we continued as near our stations as we could for forming a line.

Q. Could you judge from the motions of the French on the 24th, 25th, and 26th of July, that they were inclined to come to battle with the English, or to avoid it?

A. To avoid it by all means; they did every thing in their power to avoid it.

Q. If you had commanded a British Fleet of the force with the French, and situated as they were, with respect to an English Fleet of the like force, should you have hesitated one moment in going down upon them, and bringing them to action, upon account of the wind and weather, as you know it to have been?

A. No; and I dare say no other officer in the fleet would.

Q. What part of the French fleet did you begin action with?

A. About the fifth or sixth ship from the van.

Q. How near was you to the Vice Admiral of the Blue?

A. We began to fire at twelve o'clock, and at a quarter past twelve we backed our mizen-top-sail, within two or three cables length of the Formidable.

Q. Were any other ships near you just at this time?

A. There were two or three ships, I think, a-stern of us; the Worcester, I know, was a-stern, but I cannot say the hour.

Q. Was they far a-stern of you?

A. Upon my word, I was so engaged, I cannot pretend to say; I looked forwards to the enemy; Lord Longford passed us just as we began action.

Q. Did you look upon it, those ships in the rear were near enough to afford you succour?

A. We found no inconvenience from the want of succour, I could not tell exactly the nearness, therefore I don't choose to declare, I am certain they could not be far a-stern.

Q. Did you pass the rear of the French before or after the Vice Admiral of the Blue?

A. At a quarter past one we were very close to the Formidable, and the Midshipman upon the poop called out, there was a ship coming aboard of us upon the weather-bow, which obliged me to order the helm a weather, as soon as she had shot across me, I put my helm down again, to bring the ship to the wind, and found, when the smoke had cleared away, I had shot up under the Formidable's lee; the Formidable was then engaged with the two last ships of the French Fleet, whom I could not fire at, without firing through the Formidable, which obliged me to shoot on and pass the rear of the French Fleet, before the Vice Admiral?

Q. Then, Sir, did it appear to you at this time, that the Vice Admiral of the Blue was in danger of being cut off by the enemy?

A. No; I never thought any such thing.

Q. Did Captain Maitland see four or five ships to leeward of the body of the English Fleet, that the French Fleet laid up to in the afternoon, while the English had got upon the starboard tack, or before seeing to be repairing their damages?

A. I saw them very plain.

Q. While the British Fleet was upon the starboard tack in the afternoon, with the signal for the line of battle flying, and the French forming upon the same tack, with the sail the Victory was under, had it the appearance of a fight?

A. No; very far from it; I had a very different opinion of it, and I will tell you my reason for it, if it is allowed me.

Court. To be sure.

A. When the Admiral was standing to the north-west, and first made a signal for the line of battle, in the afternoon, at two o'clock I was laying with my head towards the enemy, to leeward of the fleet; I wore and stood to the southward, with an intention to weather our line, that I might get easier into my station; as I could not have got under her lee, I wore and stood to the southward, while they still stood on; just as I was putting about to go upon the same tack as the Admiral was, he made a signal to wear; our helm was then a lee; I let the ship come round upon her heel, without hauling the sails; I then said to my first Lieutenant and the rest of the officers, that were upon the quarter-deck, that although the signal was out for the line of battle, as the Red division was all a-stern, and the French seemed to endeavour to cut off our four ships that lay together to leeward disabled, I thought it my duty to lead down and cut off the French van, which we did about an hour after we bore away; the van of the French was within random shot of us, and they bore away two or three points. We then were pretty near our own ships, which were disabled, and two of them made sail, the Courageux and the Sandwich made sail. I saw the Red division beginning to come forward to windward of the Admiral; I then tacked, and went under the lee of our line, till I passed the Vigilant, and then hauled through the line; I imagine this will satisfy you; I did not think we were running away.

Q. Did you see the French Fleet go off in the night?

A. No.

Q. What French ships were seen in the morning of the 28th?

A. But three, in the morning early.

Q. Was your signal made to chase them?

A. Yes, Sir, it was.

Q. Do you remember your hailing the Victory after your signal was made, and telling me the crippled state of the Elizabeth's fore-top-mast?

A. I told you, both my main and fore-top-mast were crippled; we had a very large shot come, which took away near half the diameter of the fore-part of the main-top-mast; and it was sprung from that shot.

Q. If I had chased towards Ushant, and the ships crippled in their masts and sails, as they were, after the action of the 27th, was there, in your opinion, any probability of our getting up with them before they reached the port of Brest, the wind and weather as it was then?

A. No; I don't think there was any chance; the former chase that we had shews that.

Q. Captain Maitland, you have heard all the articles of the charge read, and therefore I desire you will state to the Court any instance, if you saw or knew of any such, in which I negligently performed any part of my duty upon the 27th or 28th of July.

A. I saw none; I think you did every thing a gallant and experienced officer could do upon the occasion.

No Cross Examination.

Adjourned to the next Morning, Ten o'Clock.

The Twenty-fifth Day's Proceedings, Feb. 4.

JOHN LAFOREY Captain of the Ocean, sworn.

Examined by the Admiral.

Q. I ask Captain Laforey, when was the French Fleet first seen?

A. On the 24th of July by log.

Q. I would ask Captain Laforey if the Admiral used every means as an officer to get up with and bring the French to battle from the 24th to the 27th of July, when they were brought to action?

A. I think he did.

Q. Did you judge from the motions of the French Fleet on the 24th, 25th, and 26th of July, that they were inclined to come to battle with the English, or to avoid it?

A. I was the whole time of opinion, from the observations I made, that they studiously avoided it.

Q. If you had commanded a British Fleet of the force with the French, and situated as they were with respect to the English Fleet of like force, should you have hesitated one moment in going down upon them and bringing them to action upon account of the weather, as you know it to have been?

A. I should not have thought myself justified in omitting any one period of that time in bearing down on the French Fleet and engaging.

Q. Did you see the French Fleet on the morning of the 27th of July?

A. I did.

Q. Did they shew more intention of bringing on battle that morning than on the preceding days?

A. They did not.

Q. Did you see on the morning of the 27th a signal from the Victory for several ships of the Vice Admiral of the Blue's division to chase to windward?

A. I did.

Q. Was the Ocean upon the weather or lee quarter of the Formidable when that signal was made?

A. The Ocean was wide upon the weather quarter of the Formidable and a great way a-stern.

Q. Was not your intention to have edged towards the Formidable about the time the signal was made to chase, or should you not have done so if the chasing signal had not been thrown out?

A. I had kept my ship about a point away for about half an hour, in order to get nearer to my division and increase my rate of sailing thereby, and I hauled my wind immediately upon the signal's being made from the Victory for part of the Vice Admiral of the Blue's division to chase to windward.

Q. If the signal had not been made and you bore down to the Formidable, could you have got so well into action as you did, without the wind having luckily changed two or three points to the westward?

A. I should not even where I was have got into action but for the wind shifting to the westward, for the Formidable weathered me out of gun-shot while she tacked upon the starboard tack.

Q. Did not the Formidable and the other ships of that division whose signals had not been made to chase to windward carry all their sail to close to windward, which made it needless to enforce the orders to them?

A. I observed the Formidable to make sail soon after the signal was made for particular ships of her division to chase to windward; I don't know any thing as to the rest; I did not take notice.

Q. If I had formed my line on the 27th in the morning, does Captain Laforey think I should have brought the French Fleet to action that day?

A. If the line had been formed that morning we

could not have come to action with the French that day unless they had bore down to us, which it did not appear to me they shewed any disposition to do.

Q. When you got into action with the French Fleet, how was your ship situated with respect to the Formidable?

A. I fetched up under the Admiral's lee-bow, and had just room to engage between him and the ship a-head of me.

Q. When did the Ocean come out of action?

A. About half an hour past one.

Q. At what distance was the Formidable from the Ocean when the action ceased?

A. I believe between two and three cables length.

Q. Did the Vice Admiral of the Blue at this or any other time appear to you to be in any danger of being cut off?

A. I think not; the French Fleet passed him upon a different tack, none of them stopped to engage him, and while I was near, none of them returned to engage him, consequently I think he was not in danger at that time.

Q. What time did the Victory cross you upon the larboard tack standing towards the enemy?

A. I believe about half an hour after I came out of the action.

Q. Can you inform the Court how many ships were a-head or a-stern of the Victory formed with her upon the larboard tack as you passed her upon the starboard tack?

A. I am certain there were none a-head, nor do I recollect there were any near her a-stern upon the same tack.

Q. How soon after passing her was your ship in a condition to wear to the larboard tack?

A. I wore to the larboard tack about half an hour after two.

Q. Did you hail the Worcester after you came out of it?

A. Yes, I did.

Q. Was you then to the southward or northward of the Victory?

A. I was then to southward of the Victory; I hailed the Worcester while I was wearing; she was in the way, I called out to her to get out of it; they gave me for answer I should be clear enough.

Q. How far might you then be from the Victory?

A. I don't well recollect how far I was then from the Victory, but I was from a mile and a half to two miles from the Formidable; I could not be so far from the Victory, because I met her upon the starboard tack as I returned upon the larboard tack to take my station.

Q. What tack was the Worcester upon when you hailed her?

A. She was on the starboard tack.

Q. Did you observe the signal for the line of battle flying on board the Victory the whole afternoon?

A. I saw the signal for the line of battle flying on board the Victory; I don't recollect seeing it hauled down.

Q. How soon had you got the Ocean into repair for renewing the action?

A. The Ocean was ready to renew the action when I wore to the larboard tack at half an hour past two.

Q. Your ship then was in a condition to have obeyed the signal for the line of battle?

A. Yes.

Q. What then prevented your obeying it?

A. I did not think myself at liberty to go into the line before the Admiral whose division I belonged to; I waited in constant expectation of his leading his division down into the line, till I bore away for that purpose upon seeing my signal thrown out on board the Victory.

Q. What

Q. What hour was it that signal was made on board the Victory for your particular ship to bear down?

A. About seven.

Q. How near was you to the Vice Admiral at that time, and how was you situated with regard to the Formidable?

A. I was a-stern of the Vice Admiral and upon his lee-quarter, I cannot exactly ascertain the distance, but I was not far from him.

Q. When you bore down in obedience to the signal that called you down, how far from the the wind did you lead to get into your station?

A. I bore down into that part of the line which I thought would give room for the rear of the Admiral's division and the van of the Vice Admiral's to lead between me and the Admiral. I don't recollect how many points I went from the wind, but I must have bore down pretty large, because when I laid myself in the line, the Vice Admiral was nearly upon my weather-beam.

Q. Can you recollect what sail you was under in the afternoon?

A. I do not.

Q. Can you recollect how many knots the Ocean went upon a wind?

A. The Ocean went that evening from about ten o'clock from two knots to two and a half, and after ten from two to three knots; I was obliged to haul my main-tack on board at about ten o'clock, we had fallen down so much upon the French line.

Admiral Montagu. What sail had you set from dark till ten o'clock?

A. The three top-sails and fore-sail, fore-top-sail upon the cap, the fore-top-mast being much wounded by a double-headed shot about five feet above the cap; I do not recollect whether I had stay sails or not?

Q. How many reefs had you in your top-sails?

A. I think they were close-reefed, I know the fore-top-sail was, I reefed it after I came out of action upon account of the mast being wounded.

Q. From the manner in which the Admiral led to the southward, after being upon the starboard tack, although the French Fleet were a-stern of her, had it to you the appearance of a flight?

A. Not in the least.

Q. Did the Vice Admiral of the Blue, in the afternoon, repeat any signal that was made from the Victory?

A. I saw the Blue Flag at his mizen-peak, I don't recollect any other signal, though I don't infer from that that other signals might not be made. I really do not recollect whether there were or not others.

Q. Do you recollect whether you saw the Blue Flag at the mizen-peak before or after your particular signal was made to come down?

A. Before.

Q. Did the Vice Admiral when he made that signal shew or make any appearance of bearing down himself?

A. I did not see any.

Q. Did you conceive his repetition of that signal meant you should keep in his wake, or bear down to the Victory?

A. I believe I have answered that in a reply to a former question.

Q. Did you observe any signal or movements of the Victory in the afternoon of the 27th of July that conveyed to you any idea the Admiral did not intend to renew the action that afternoon?

A. I did not.

Q. If the Vice Admiral of the Blue had led down his division at five or six o'clock in the afternoon, was there not day-light sufficient to renew the attack, and did there appear any other reason that could prevent it?

A. I think if the line of battle had been formed

by six o'clock there was day-light enough to have renewed the action, and I do not recollect any other impediment.

Admiral Montagu. In the situation the British and French Fleets were after the action, and the enemy had began to form their line of battle, could the English have brought the French to battle again if they had been disposed so to do?

A. I am convinced it was in the power of the French Fleet to have attacked us, because after I had placed my ship in the line, I sent for the officers commanding the guns upon the different decks to shew them three of the French line lying up for the Ocean, in order that we might be prepared to receive them when they came up.

Q. Was the French Fleet seen on the morning of the 28th from your ship, or had they run off in the night?

A. I saw but three sail in the morning, one of them nearer than the other two to me; I saw no more.

Q. What force did you take those three ships to be of?

A. The nearest to me I observed was a line of battle ship, the other two were carrying sail at a distance from me, I could form no judgment of them.

Q. If I had chased towards Ushant in the morning of the 28th in the state the rest of the fleet was in, their masts, yards, and rigging after the action of the 27th, with the wind and weather as it then was, was there the smallest probability of coming up with the French Fleet before it reached the port of Brest?

A. Not the least probability whatever.

Q. What were your bearings and distance from Ushant at noon on the 28th?

A. Ushant bore E. N. E. half E. twenty-three leagues by the Ocean's reckoning.

Admiral Arbuthnot. Did you sound? I take it for granted that you did.

A. I don't recollect whether we sounded that day, but I have the soundings the 23d at noon, the day we saw them; I imagine we might sound, but in the extract of the ship's log-book which I brought with me, they only gave me the 23d: I have not the latitude of the 23d but the 24th, and no soundings down upon any other day but the 23d.

Q. What soundings had you on the 23d?

A. At noon, just before we saw the French an hour or two, we had eighty-four fathom, coarse sand and broken shells.

The Admiral. You have heard all the articles of the charge read, therefore I desire you will state to the Court any instance, if you saw or know of such, in which I negligently performed any part of my duty upon the 27th and 28th of July.

A. I know of none; I was convinced at that time as far as my judgment extended, that Admiral Keppel had left no means unaffected to bring the French to action, or to continue it afterwards, and I have remained in those sentiments invariably to this time.

Cross Examination.

Prosecutor. Does Captain Laforey describe the Ocean to be upon the Formidable's weather quarter in the morning when the signal was made for the ships to chase: He also says, that after tacking he fetched up under the Formidable's lee-bow.—What does he mean by fetching up; fetching up from whence; or being upon the weather-quarter when they tacked; where was you then?

A. I did describe the Ocean to be upon the weather quarter of the Formidable when the signal was made for part of that division to chase. I afterwards said, when the Formidable came into action, the Ocean fetched under her lee-bow: I said likewise, that upon tacking to the starboard tack the

Vic:

Vice Admiral had weathered me out of gun-shot, consequently when I tacked to the starboard tack, I was upon the Formidable's lee-quarter, the shift of wind enabled me to fetch up under her lee bow; my station was upon her quarter, I could not fetch it, but I fetched under her lee-bow and came to action as I have described.

Admiral Arbuthnot. If I don't mistake your first answer was, that you was upon the Formidable's weather-quarter far a-stern.

A. It was, Sir.

Q. How wide was you upon the weather-quarter; how far upon her weather-quarter, two points, or how, Sir? That I mean as a question, the other was conversat on.

Q. I would ask how wide he was upon the Formidable's weather quarter, and how far a-stern when those signals were made from the Victory for the ships of the Vice Admiral of the Blue's division to chase to windward?

A. I cannot exactly ascertain at so great a distance of time the precise distance and bearings, but I imagine the Vice Admiral's division might be about three points on my lee-bow, and I think I was full four miles a-stern.

Q. If you was four miles a-stern, was you then close to the Victory?

A. I was not close to the Victory, I was to leeward of her wake and a-stern of her.

Q. Where was your station upon the larboard tack?

A. Upon the Vice Admiral's larboard quarter.

Q. In the line, where?

A. Does the Admiral mean the line a-head or the line a-breast?

Q. The line a-head.

A. A-head of the Vice Admiral and next to him.

Prosecutor. You have said, Sir, you had once intended to edge down to get into your station with respect to the Vice Admiral of the Blue, which in sailing you say was upon the weather-quarter and in the line next a head of him; if you had continued to do so, instead of being four miles a-stern and got into either of those stations, would you not be in a proper situation respecting your own Admiral for fetching up farther towards the enemy's van after tacking, than by staying where you was?

Mr. President, I must beg the Vice Admiral will be so good as to state that question in another way, or else to establish the fact: He is pleased to say and infer that I said where I was, which I imagine implies that I was not getting into my station. I don't admit of the fact; I said I hauled my wind upon the signal being made for ships to chase, upon those signals being made I concluded the intention of them was to bring the Vice Admiral's division, which was too far to leeward, into the body of the fleet, upon which I hauled my wind, but at the same time carried all the sail my ship would permit to get into my station: I had sprang my main-top-mast on the Sunday morning, which was the occasion of my being thrown to leeward; I had worked with all the sail I could carry all night to fetch in my station; in the morning I found myself where I have described; I do not admit I was staying there at any rate.

Q. He said he hauled his wind and made sail.

A. I explained myself, because the fact standing upon the minutes is a degree of accusation against me for not keeping my station.

Prosecutor. I think Captain Laforey said he was upon the Formidable's lee-bow when he came into action; what ship was next a-head of you, Sir?

A. The Egmont.

Q. Did you continue to follow the Egmont during the action?

A. The distance between the Formidable and the Egmont was so short, it was with difficulty I

could keep between them and engage without firing upon them, and I was once or twice very near on board the Egmont.

Q. Did you go on and keep that distance; how near to the Egmont was you the remainder of the time you was engaged?

A. I would beg to ask whether the Vice Admiral meant after the engagement was over when I came out of the action, or during the action?

Q. During the continuance of the rest of the action, whether you was in the middle?

A. I think I have answered that in the preceding answer, but I will answer it more fully in any part the Vice Admiral wishes.

Q. I go to the rest of the time after you began.

A. From the first to the last I had a difficulty in firing clear between the Vice Admiral and the Egmont, but I was nearer to the Egmont than the Vice Admiral; from the first to the last it was about an hour and an half.

Q. Did you at no time get up with the Victory during the action, or do you remember the circumstance of being very near the Thunderer when she fired into the Egmont?

A. The action had began before I got into it, and the smoke was so thick and almost so incessant that I don't recollect to have seen any ship a-head during the time I was engaged but the Egmont.

Q. Do you remember, Sir, the circumstance of the Formidable backing her mizen-top-sail before the action began, you being to leeward, to let you shoot a-head, that you might fire clear of her?

A. I recollect upon coming up finding the Formidable with her mizen-top-sail a-back, but I don't know when she backed it.

Q. After you had got a-head of her did you observe she continued it a-back before the firing began to let the ships a-stern close?

A. I observed after I got a-head the Formidable did continue her mizen-top-sail a-backed, but I did not ascribe it to the motives the Admiral possibly intended them for; the smoke was so thick I now and then only saw two ships a-stern of him; I indeed attributed his backing his mizen-top-sail to an act of gallantry, with a desire of giving the French as much of his fire as he could as they passed along. I mention this because it was really my idea at the time, and I believe I mentioned it to my officer.

Q. Must not the Ocean have been constantly increasing her distance from the Formidable, if she did not also a-back her mizen-top-sail?

A. The Ocean's mizen-top-sail was a-backed more than once during that time, and her top-sails were lowered down during the action upon account of her shooting too near the Egmont, for we were twice in danger of being aboard her.

Admiral Arbuthnot. I must beg leave to ask a question. You have said that when you came out of action you believed yourself to be about three cables length distance from the Formidable.

A. I believe from two to three, I said.

Q. Do you believe at any one time of the action that you was at a greater distance from her?

A. I was not in general so far, and in that distance must be included what I was to leeward as well as what I was in a straight line; I was not that distance in a straight line.

Prosecutor. The signal being made for seven sail, as it comes out now, to chase, how many ships remained of my division whose signals were not made for chase?

The Admiral. I don't remember his saying there was seven.

Court. Can you recollect how many ships signals of the Blue division were made for chase?

A. No, Sir.

Admiral Montagu. I beg leave to refer to Mr. Moore's evidence.

The Admiral. It was the Shrewsbury.

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Prosecutor

Prosecutor. Then six or seven, let it stand so.

Admiral Montagu. Then it should be taken down of two divisions.

The Admiral. Captain Laforey had not said the number at all.

Prosecutor. The Shrewsbury makes eight.

The Admiral. I will admit of any number, seven or eight; I apprehend Captain Laforey has not said yet any number; and in regard to cross examining, I take it the cross examination is upon my examination; if he goes to other facts, he might have called for those facts when he had his witnesses here; but I imagine the telling a witness what is come out of other evidences' mouths is not regular and has nothing to do with a cross examination.

Prosecutor. I should apprehend I have a right to examine the evidence relative to any matter in the case before the Court.

The Admiral. I deny the fact. That gentleman was here and summoned to be called by you; you had given it up and had done; then I was called upon my defence, therefore, Sir, for the sake of justice, I beg Sir Hugh Palliser may be kept to those points.

Prosecutor. I apprehend whether he was or not summoned to appear for me, there is no restraint in examination of a witness, whether he was called by me or the Admiral, relative to the cause of trial.

The Admiral. I still deny that you have a right to cross examine in that manner.

Court. We must debate upon it.

Admiral Montagu. It is not a matter of a Court Martial, it seems to be a point of law between two lawyers, whether it shall or shall not be.

The Court came to the following Resolution: It is agreed that the Prosecutor has no right upon the cross examination of a witness to enter into new matter, but must confine himself to such facts as have fallen from the witness upon his first examination by the Prisoner, and therefore, the question now standing upon the Minutes is not to be put.

Prosecutor. If I am to be confined I shall be very much at a loss to go on; I don't mean to intimate the smallest degree of discontent to the resolution of the Court, but it has laid me under difficulties.

Admiral Arbuthnot. I must observe this: It behoves upon the one part, a person to be secure in the facts he means to set forth or produce to the Court, so that it will be difficult to controvert them; upon the other hand the Prisoner is to endeavour, when the Prosecutor has done his part, to prove the evidence is mistaken, or the facts are not so clearly proved as they ought to be; and when the Prosecutor has done his business, the Prisoner then sets forth what he has to say in his behalf, and all his evidences are to be invalidated so far as they can, but there will be no end to the matter if the evidences themselves are to be tried; how can the Court ascertain it? It has upon my word been the case in some cases here, where the evidence himself in the course of his evidence has been tried.

Prosecutor. I can only lament the same restraint was not put upon the cross examination of my witnesses.

President. The Court has taken a great deal of pains to do justice to both parties.

Prosecutor. I wanted to have asked Captain Laforey, as he was one of the ships of my division, when the firing ceased; and from the situation he was in, if he can give an account how the Formidable proceeded, and how the Ocean proceeded; the Admiral has not asked these questions, am I at liberty to ask them?

Admiral Montagu. I do not see why you should ask those questions; it will lay in the breast of the

Court whether they are of any consequence, or whether they prove the charge against the prisoner the Court will be the best judges afterwards; I own myself I cannot say it is leading to ask where the Ocean was or the Formidable after they came out of action; the point to prove is, Whether the Admiral did his duty, or whether he neglected his duty; whether he disgraced the British Fleet, or whether he run away?—I will sit here, if necessary, to the day of resurrection to hear what the Prosecutor says or the Prisoner, but keep to the point, to the charge.

Prosecutor. With deference I think I have a right to examine to all such facts as are relative to all those transactions that can enable the Court to form a judgment.

Captain Cranston. You cannot examine him now to fresh facts to support the charge; he is called in defence of the prisoner.

Admiral Montagu. If you can invalidate his evidence you may, but you are not to examine upon fresh facts to support the charge.

Prosecutor. I ask what the Formidable did after she came out of action?

Captain Laforey. Will the Vice Admiral please to point to any particular time?

Q. Any time; the first movement after the action.

A. I cannot tell; for from the time I came out of action to the time I wore to regain my station, which was about an hour, I was so occupied in the repairing what damages we had received, that I did not attend to the Formidable at all.

Q. Captain Laforey cannot say that she wore and lay with her head towards the enemy again.

A. No; I did not see her first wear one way or the other. I went on.

Prosecutor. Have I any right to ask whether the Ocean proceeded on upon that tack till she passed the Victory upon the contrary tack?

The Admiral. I have asked that question.

Captain Laforey. I have already answered that question, in reply to a question put by the Admiral; but I will answer that again, if you please, Sir: The Ocean did proceed on upon the starboard tack till she passed the Victory upon the larboard tack.

Q. When did you see the signal for the line on board the Victory?

A. When we passed each other upon different tacks.

Q. According to that signal for the line upon that tack, where would the Ocean's station properly have been?

A. A-head of the Formidable, whose station was a-head of the Victory.

Q. Were not the ships of the Vice Admiral of the Blue's division the last that came out of action?

A. They were.

Q. Did they all proceed to pass the Victory while they were upon the starboard tack?

A. I don't know; the Worcester was the only ship of that division that I recollect having any knowledge of, after I came out of action.

Q. Though you don't know that the Formidable wore and laid her head towards the enemy, do you know she was the last ship that did get the length of the Victory, and that at the moment the signal was made on board the Admiral to wear?

A. I have already said that I know nothing of the motions of the Formidable from the time I came out of the action till the time I joined her again upon the starboard tack, because I wore to the larboard.

Q. If on passing the rear of the enemy he had found the Admiral and the rest of the ships upon the other tack, attacking or advancing to attack the enemy's rear, would not you in the Ocean have wore and laid your head the same way upon the same tack also; or was the condition of your ship such that you could not have done that?

A. I don't

A. I don't understand the question; the Vice Admiral says, if upon passing the rear I had found the Admiral upon the other tack, I could not find him upon the other tack who was not out of the action when I passed the rear. It is not clear to me, possibly I don't understand it right, but I have no objection to answering any thing that the Vice Admiral pleases to ask me, because I am not conscious that I am liable to any accusation, but I don't comprehend the question.

Court. I understand the short question is, whether you were capable of wearing or not?

A. I am ready to answer it.

[The Question read again.]

A. I wore the Ocean as soon as I thought her in a condition to wear, after reefing my fore-top-sail to save my fore-top-mast, which I before mentioned was dangerously wounded with a double-headed shot, so much that I could not hoist a sail upon it.

Admiral Arbuthnot. How long after you came out of action?

A. I believe it might be an hour, but I was rather delayed.

Prosecutor. Let Captain Laforey understand I do not want any reason why, but to give such reason why he was not capable.

A. I was something delayed in coming to the other tack by putting my ship in a condition to tack instead of to wear, in order to recover my station, being too far to leeward before.

Admiral Arbuthnot. I must observe to you, Sir, there is a very great distinction between a gentleman putting his ship in a condition to wear and a condition instantly to go into action in a line of battle; was your ship, at the time you did wear, in a condition to go along-side any ship into a line of battle and keep your line?

A. I don't recollect any impediment to the Ocean's going into action immediately after her wearing.

Q. After her wearing, when you came out of action was you so much disabled, that if you had been immediately along-side any ship on the same tack, was not you in a condition to maintain the engagement; was you in so bad a condition you would be obliged to have quitted your enemy?

A. I don't think the Ocean received so much damage during the time we engaged as two frigates would in half an hour if they were along-side each other, and I can scarce say we were well warmed with what we had; I have something to add to that, I speak with regard to the damages sustained in her hull and her people; I don't mean as to the quantity of running rigging that was cut, or sails, because the Admiral don't suppose we were to work the ship about.

Q. Am I to understand by your answer you could have immediately re-engaged if you had met with a ship and lay along-side of her, and had an opportunity of getting along-side of the ship?

A. Yes, independent of manœuvring the ship in regard to the sails and rigging.

Court. Then we are to understand the sails and rigging were in such a condition you could not have renewed the action, or could not have chased?

A. I could not have wore immediately or staid, but in every other respect I could have fought the ship immediately.

Admiral Arbuthnot. I beg leave to put a question. Your opinion has been frequently asked, as a very able and gallant officer; I will beg leave to ask you, if I had had the honour to have been entrusted with a command of a squadron, and you had had a pennant under me, and we had come to action, and you had discovered in me any omission which mankind are liable to in the heat of action, should you not have thought it your duty, for the honour of the colours, setting my honour out of the question, to have informed me of what your opinion was, and how I could have remedied it by yourself or officers?

A. Most certainly, if my information would have tended to have remedied any omission or mistake?

Prosecutor. Is not that equally proper for a senior officer to observe to an inferior, when he sees any error upon his part, as for an inferior to go to his superior, or with those observations respecting him? it is matter of opinion only.

A. I think the obligation is reciprocal.

Q. Captain Laforey has mentioned that in the evening, when he went into his station in the line, that he observed three of the enemy's ships were looking up for the Ocean, were those three ships the leading ships of the enemy's line that was then forming?

A. I think they were not, to the best of my recollection they were not, for I think the line was farther formed; before the time I got down the French line they got farther formed, those ships were a stern.

Prosecutor. I ask whether those were the leading ships of the French fleet?

A. I say not.

Q. What hour, what distance, did you make that observation; I think you say you bore down at seven o'clock?

A. It was between seven and eight, I cannot exactly tell at this distance of time.

Q. Were the fleet upon a wind then?

A. I think they were, or nearly so.

Q. Then in that situation those ships looking up for the Ocean, does not that mark them to be very much a stern, near your wake?

A. No, they might look up in my wake without being very much a stern.

Admiral Arbuthnot. He was a long way a-stern in his own station.

Captain Laforey. I don't understand the Admiral's question; the Admiral don't mean a possibility in point of distance, but far to leeward, perhaps?

Admiral Arbuthnot. Yes.

Captain Laforey. Those ships that did look up were not very far to leeward, could not be so; but really to explain myself fully, the distance of time is so great, and I am so little prepared for those kind of questions, that I don't recollect how our fleet was going at that time, whether before the wind, or whether one or two points, for that makes a wide difference with regard to that question.

Prosecutor. Captain Laforey understands I don't wish to extort any thing from him he cannot speak to, to his own satisfaction; Captain Laforey has said, that he was doubtful whether those three ships were the leading ships, can he recollect whereabouts the leading ships were, with respect to their bearing from the Ocean at the time?

Admiral Montagu. I must beg to have the former question read if you please, and the answer; I don't recollect Captain Laforey said he was doubtful, but positively they were not.

Captain Laforey. The Vice Admiral is right, I think they were not.

A. I don't recollect they passed me very fast, playing with us as it were, some with the mizen-top-sails a-back, and some at times shivering their main-top-sails.

Q. The time you are speaking of, if I recollect right, is between seven and eight, after you got down in the line?

A. It was after I was in the line, from the time while they were forming the line.

Q. Captain Laforey has said he saw three French ships on the morning of the 28th, how far off was the nearest of them, when you first discovered them to be French ships, from the Ocean?

A. She was about three miles from the Ocean, a-bast our lee-beam.

Q. Was the Formidable then a-head or a-stern of you?

of you, between you and the Admiral, or you between the Admiral and him, or how otherwise?

A. The Formidable was then a-head of the Ocean, bearing down a thwart her.

Captain JAMES BRADLEY of the Pluto
Fireship sworn.

Q. Captain Bradley, was you a Captain of a fireship on the 27th and 28th of July?

A. Yes, Sir.

Q. Did you see the English and French ships engaged?

A. Yes, Sir.

Q. Did you pass to leeward out of gun-shot?

A. Yes, Sir.

Q. Do you recollect at what time you passed the rear of the French fleet in the fireship you commanded on the 27th of July?

A. About twenty minutes after one.

Q. Did you observe the Vice Admiral of the Blue at that time?

A. Yes.

Q. Where was he in respect to the bearings from your ship?

A. I was a little before his lee-beam.

Q. At what distance?

A. Just without the range of shot.

Q. Had you at any time observed the Vice Admiral of the Blue in danger of being cut off by the French?

A. I did not.

Q. At the time you passed the rear of the French fleet, at twenty minutes past one by the watch, had the Vice Admiral ceased firing with the French?

A. No, Sir.

Q. How soon afterwards?

A. He was engaging the last ship.

Q. At this time did you observe which way the Victory was standing?

A. On the larboard tack.

Q. Did you observe whether she had the signal out for battle, or was it hauled down?

A. I did not observe the signal for battle on board the Victory, I saw it on board the Queen.

Q. At the time the Vice Admiral of the Blue came out of action, what ships of his division did you observe a-stern or a-head of him, and how near were they?

A. The Worcester immediately a-stern, two ships a-head, but I don't recollect what ships they were; the Worcester appeared to be close.

Q. I would ask Captain Bradley when he discerned the Victory first upon the larboard tack, how far he thought she was from him at the time mentioned there?

A. About a mile.

No Cross Examination.

Captain RICHARD EDWARDS of the
Sandwich sworn.

The Admiral. I would ask Captain Edwards what day the French fleet was first discovered?

A. The 23d by the day, and the 24th by the log.

Q. Did he see the French fleet on the next day?

A. I did.

Q. Were they to windward or to leeward of the English fleet?

A. To windward.

Q. Was it in their power to engage the English fleet, if they had thought proper, that day?

A. Most certainly.

Q. Did I form my line the first day I saw them, and make a signal the second day I saw them for the same purpose?

A. I beg leave to refer myself to my minutes that were taken at the time.

Court. By all means.

A. The first day I observe at half past four a signal made by the Admiral for the line of battle,

at half past six the second day, P. M. I observed the same.

Q. If I had pursued the French fleet in order of battle, would it have been possible to have preserved our nearness to them?

A. By no means.

Q. Did I use every means, as an officer, to get up with and bring the French to battle, from the 24th to the time we came into action?

A. Yes.

Q. Did you judge from the motions of the French fleet on the 24th, 25th, and 26th of July, that they inclined to come to action with the English fleet, or did they avoid it?

A. To avoid it.

Q. If you had commanded a British fleet of the same force with the French, situated as they were, with respect to the English fleet, and of like force, during the 24th, 25th, and 26th of July, should you have hesitated one moment to have brought it down to battle, notwithstanding the wind and weather as it was on those days?

A. No, by no means.

Q. Could not the French fleet have brought the English to action any of those days?

A. Most certainly, having the advantage of wind.

Q. Did the French shew any more disposition to bring on action in the morning of the 27th than on the preceding days?

A. No.

Q. What would have been the consequence if I had formed the fleet into a line of battle on the morning of the 27th, instead of closing with the French as I did?

A. No engagement.

Q. What part of the fleet did you begin to engage?

A. The second a-head of the Admiral fired upon me; I ordered them not to fire till the Admiral had passed you and the Prince George, but the men, from their impetuosity, began with the first a-head of the French Admiral; they acted contrary to my orders from their impetuosity.

Q. Was you well connected with the Victory and the center division to which you belonged?

A. The Prince George was on the quarter of the Victory, and as near as I could be with the force of my main-sail upon the weather quarter of the Prince George.

Q. Was the French Fleet in a regular, well connected line of battle?

A. No.

Q. I am going to ask again a very trifling one, but I cannot help putting it to you; did you observe one of the French ships with her main-yard carried away while you was in action; was it carried away by the Prince George, or the Sandwich?

A. I did observe one of the French ships main-yard carried away; it was noticed by myself, the master, and several, and Lieutenant Buchanan, who commanded the lower-gun deck, having occasion upon duty to attend me upon the quarter-deck, soon after told me, he flattered himself he had pointed a gun that shot it down; I likewise saw another French ship with her mizen-yard half down; another ship with her top-sail sheet cut.

Q. Did you see the signal to wear soon after coming out of action?

A. I did not see the signal to wear soon after coming out of action, because I was to the southward then of the Admiral, when he had made the signal; but I did observe the Admiral to wear.

Q. Was the Sandwich in condition to wear after the Victory had wore, and you observed she had got upon the larboard tack?

A. She was not.

Q. Did you observe the Victory wear back to the starboard tack?

A. I did.

Q. What

Q. What was the situation when the Victory did wear with her head to the southward?

A. We were stopping our leaks, when the Admiral made the signal, and wore. I ordered the ship to be wore; the Carpenter came to me and told me, that the damages the ship had received by the shot under water, were such, that he could by no means plug them and repair them if we wore, and lay her head the other way; I asked him if they were material, he said, yes; for the ship made water much. I ordered him to make the utmost dispatch, and let me know when he completed it; when the Admiral wore, we were then in a situation of repairing these defects, and securing our rigging, and bending our main and mizen-top-fails.

Q. Did you observe any other ships about you disabled at that time?

A. Yes.

Q. Can you tell what they were?

A. The Courageux, Egmont, Robuste, and Ramillies.

Q. After the Victory had got upon the starboard tack again, did you observe her point towards you and the other disabled ships?

A. She did from the wind.

Q. Did that course occasion her to near the enemy, or to increase her distance from them?

A. Certainly to near the enemy, because, at four o'clock, when the Carpenter reported to me he had stopped the leaks, and repaired the defects, I ordered the master then to put the ship about; she missed stays, and I immediately ordered the mizen to be hauled up, and the ship to be wore, and we wore within random shot of the van of the French Fleet, hauled our wind, and joined the Admiral.

Q. Did you observe the Victory at this time with any signal flying?

A. At four I obeyed the signal for the fleet to bear down in the Admiral's wake; at three quarters past four, I observed the signal for the line of battle a-head a cable's length asunder; at half past five, for three particular ships being out of their stations; three quarters past six a signal for several of the Vice Admiral of the Blue's Squadron to make more sail; these signals were taken by the time of my watch.

Q. Did you observe, in passing the Victory, what sail she had set in the afternoon of the 27th.

A. I endeavoured to head the Victory, to get to my station; had a little dispute with my master, when we drew nearer; he desirous as well as myself to get to windward, for we were so near, I was afraid we might have been aboard of one another, I, with a little heat, told my master, it was my duty to go to leeward of the Admiral, and I passed him so close, as to receive orders from Admiral Campbell to wear immediately; the Victory then seemed to me to have fore-sail and reefed top-fails.

Q. Did the signals and motions of the Victory convey to you any idea that the Admiral did not intend to renew the action in the afternoon of the 27th of July?

A. By no means; no.

Q. Had these manœuvres, as you have stated them, of the Admiral's, the least appearance of a flight from the enemy?

A. No; I have answered, that he was bearing down to them when I passed him.

Q. Did you see part of the French Fleet on the morning of the 28th?

A. I saw three.

Q. Did you make any observation what size they were?

A. One was nearer than the other two; I took one to be a capital ship, and the other appeared to me to be frigates.

Q. How far do you think they were from the Sandwich?

A. Four or five miles, I believe.

Q. Was the Sandwich in a condition to chase, had a general signal been made for that purpose?

A. Not to chase.

Q. Did you observe any particular ships signals made to chase in the morning of the 28th on board the Victory?

A. I did not, for as they had run away, I had done with my minutes.

Q. Then did you see any reason to expect we should have got up with the French Fleet before they had got into the port of Brest, if we had made a signal to chase?

A. No.

Q. You have heard all the articles of the charge read, therefore I desire you will state to the Court any instance, if you saw or know of any such, in which I negligently performed my duty on the 27th or 28th of July.

A. I cannot state any, for I saw none.

No Cross Examination.

Captain WALSINGHAM of the Thunderer sworn.

Q. From the 24th, after seeing the French Fleet, to the moment they were brought to action, did they shew any intention of coming to battle, or did they always avoid it?

A. They never shewed any intention, they always avoided it.

Q. Did I do my utmost to bring them to action, from the 24th to the day the fleets got into battle?

A. It was impossible, Sir, you could do more.

Q. Had you commanded the British Fleet in the situation the French Fleet were in, with respect to the English, during the 24th, 25th, and 26th of July, would you have hesitated a moment to have led it down to battle, on account of the wind and weather during any part of these days?

A. Not a moment, Sir.

Q. What, in your opinion, would have been the consequence, if I had formed a line of battle early in the morning of the 27th, instead of pursuing the French Fleet as I did?

A. You never, Sir, could have brought them to action.

Q. What part of the French Fleet did you begin action with?

A. I believe, Sir, to the best of my recollection, about eleven or twelve sail from the rear.

Q. Did it appear to you to be the object of the French Fleet to have gone off to windward, instead of coming to action, if they could have passed the English far enough to windward?

A. I have not the least doubt of it.

Q. I am charged with having advanced to the enemy, and making a signal for battle, without having formed the line; I desire you will acquaint the Court if you think I was justifiable in the manner I attacked the French Fleet?

A. You certainly was, Sir; you had no other chance of bringing them to action.

Q. I am charged with having stood to a great distance from the enemy, before I wore to stand towards them again; I ask you, who must be able to know it, as being near me when I wore, whether the fact be true?

A. I thought you wore very soon; I had some difficulty in following you.

Q. Did I make the signal for the line of battle as soon as I had wore?

A. You did, Sir.

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Q. Was

Q. Was that the properest signal I could make to collect the fleet together?

A. Without all manner of doubt.

Q. I am charged with having shortened sail, instead of advancing towards the enemy; I desire to know if I had a sufficient force collected to have admitted of my advancing faster than I did?

A. Undoubtedly not.

Q. Had I at any time, while I stood upon the larboard tack, a sufficient force collected to renew the fight?

A. No.

Q. Did you see the French Fleet wear and begin their line on the starboard tack?

A. I did, Sir.

Q. Did I make every necessary signal to form the line, and collect the fleet upon the starboard tack?

A. Every signal you could possibly make.

Q. What sail did I carry?

A. Reefed top-sails and fore-sails, I think.

Q. Did you observe any ships disabled to leeward?

A. I did.

Q. Did you observe me lead down from the windward for their protection?

A. I did, Sir; and I observed to my officers upon that occasion, I thought you really bore down very much unsupported.

Q. Was not the sail I carried necessary for the protection of the disabled ships, and could the degree of sail I did carry possibly have prevented the Vice Admiral of the Blue coming into the line.

A. So far as it appeared to me, it could not prevent his coming into the line.

Q. Did not the sail I carried during the afternoon, permit the French to range up with me, and most of the ships under their top-sails?

A. It did, and very often their mizen top-sails aback.

Q. What sail had you set in the Thunderer to keep in your station?

A. I had my top-sails, Sir, in general, sometimes my mizen-top-sail aback, and only one reef in my top.

Q. Was not what you had for a main-top-sail a mizen-top-sail?

A. It was, Sir.

Q. Had this sail that you have described, although the French Fleet was a-stern, and on the lee-quarter of the Victory, the least appearance of a flight?

A. A flight; no, Sir; I hear the question with indignation, and I reprobate the idea.

Q. Did you see the Vice Admiral of the Red leave the rear to form a-head?

A. I did, Sir.

Q. Was there not day-light at that time sufficient to have attacked the French Fleet, and do you not believe I should have done it if the Vice Admiral of the Blue had immediately bore away and taken his station in the rear of the fleet; the period I mean is, when the Red division left the stern, or quitted the rear?

A. There certainly was time enough, Sir, and as a strong proof, that I supposed it was your intention to have renewed the action, that night my hands were never from their quarters.

Q. Can you assign any reason why I did not attack the French Fleet while there was day-light for me to do it?

A. There was but one, Sir, that suggested to me; and that was, you was not supported by the Vice Admiral of the Blue.

Q. Did the Vice Admiral of the Blue ever make any visible effort to come into the line?

A. Not that I saw.

Q. How long did you observe the Formidable's fore-top-sail unbent?

A. I believe, to the best of my knowledge and recollection, for four or five hours.

Q. Did you observe any other defect in that ship?

A. None.

Q. Did you see any signal for that ship, that she was in distress, as the twenty-second Article of the fighting instructions directs?

A. No.

Q. Did Captain Walsingham observe ships to be called by the Vice Admiral of the Blue, for the purpose of changing his flag, by which I should have known his distress, as the twenty-fifth Article allows of?

A. No.

Q. Did you ever see the Vice Admiral repeat the signal for the line of battle?

A. No.

Q. What sail did you carry during the night of the 27th, to keep in your station?

A. My top-sails and main-top-mast stay-sails, sometimes when I shot a-head, my mizen-top-sail a-backed.

Q. Did you see the French Fleet in the morning on the 28th?

A. No.

Q. Did you see any French ships?

A. I saw three ships to leeward, and I saw your signal thrown out for chasing.

Q. If I had made a general signal to chase to leeward on that day, in the state the French Fleet was in, after the action of the 27th, and with the wind and weather as it was, was there the smallest probability of coming up with the French Fleet before they reached the port of Brest?

A. I should think not, because the French ships in general were not much disabled in the masts and rigging; and the three ships we saw the next morning set their top-gallant-studding sails.

Q. You have heard all the articles of the charge read, therefore I desire you will state to the Court any instance, if you saw or know of any such, in which I negligently performed any part of my duty on the 27th and 28th of July?

A. Sir, I know of none, I have always been taught to look up to you as an officer of great ability, courage, and good conduct; I never had the honour of serving under your command before; but prejudiced as I was in my good opinion of you, your good conduct exceeded my most sanguine expectations.

Q. There is one thing, I beg pardon of the the Court, and Captain Walsingham, for not mentioning, it is relative to the Thunderer firing into the Egmont, which should be explained; I should be very glad you would relate it; the ships firing into one another is part of the Charge exhibited against me; I shall be very glad if Captain Walsingham will give an account of it?

A. The misfortune, Sir, that happened from the Thunderer, in firing into the Egmont, was occasioned by the Egmont shooting upon my starboard quarter when I was in the heat of action; upon the smoke clearing away, the first notice I had of it, was seeing the Egmont's gib-boom abreast of my main-shrouds; I immediately sent down orders to put a stop to the firing, and I hailed the Egmont too; the accident that happened, was during the smoke, and the time I was engaged; for after I saw the Egmont was upon my starboard quarter, I am sure there was not one gun fired; at the same time I must take notice, there was not the least confusion in the management of the Thunderer.

Court adjourned to Ten o'Clock next Morning.

The Twenty-sixth Day, Friday, February 5.

Captain WALSINGHAM called in.

Cross Examination by Prosecutor.

Q. Ask Captain Walsingham whether the ship he first began to engage with, was a-head or a-stern of the French admiral?

A. Upon my word I cannot directly recollect what ship I fired at first; I believe the Admiral; because many ships fired at me whose shots fell short, and I received the fire of two or three ships that went through my sails, hulled me, and went over me before I fired: I did not fire till I was within point-blank shot.

Q. During the time you were engaged was you a-head or a-stern of the Victory, or partly on one side or the other during the whole time.

A. I was a-stern of the Sandwich, Sir, who was a-stern of the Prince George, the ship a-head of the Victory, and there I remained the whole time.

Q. Was you a-head or a-stern of the Victory upon the starboard tack.

A. I was a-head of the Victory.

Q. What time did the Red division quit the station of the Vice of the Blue.

A. To the best of my knowledge and recollection, a little before five.

Q. Did Captain Walsingham, after he was out of action himself, take notice of the ships that remained in action; did he observe the Vice Admiral of the Blue, or take notice of him, or make any observations at that time?

A. As soon as I was out of action I went into the stern gallery, and paid particular attention to the Formidable; and, upon my word, I felt a satisfaction at the manner in which she engaged, which I think did infinite honour to her officers and the ship's company; I have repeatedly expressed it, and I think to the Vice Admiral himself.

MICHAEL CLEMENTS, Captain of the Vengeance, sworn.

Examined by the Admiral.

Q. Did the enemy at any time from the morning of the 24th to the 27th at noon, when they were brought to action, shew any indication of designing battle?

A. No.

Q. I would ask, Did I do my utmost endeavours, as an officer, to bring them to action during those days?

A. Yes, I think you did.

Q. Had you commanded a British fleet in the situation the French fleet were in with respect to the English, during the 24th, 25th, and 26th of July, would you have hesitated one moment to have brought them down to battle during any one of those days, upon account of the wind and weather during those days?

A. No.

Q. Captain Clements, I am charged with having advanced to the enemy, and made the signal for battle without forming a line; what, in your judgment, would have been the consequences if I had formed it, instead of closing with them as I did?

A. I don't think that the enemy's fleet could be brought to action upon that day, and there was a prospect, in squally weather, of losing sight of them in consequence of it.

Q. I am charged with not having advanced to renew the battle after I had passed the rear of the enemy and was upon the larboard tack, to stand towards them again. Had I at any time a suffi-

cient force collected to renew the fight, or prevent their forming a line on the starboard tack?

A. No.

Q. Was not the signal for the line kept flying all the time to collect them?

A. I was so busily employed in my own ship that I saw no signal for the line on the larboard tack.

Q. I am charged with having worn again, and made sail directly from the enemy. Was not my wearing at that time to stand to the southward a necessary manœuvre for the protection of my disabled ships, and for a collection of my fleet to renew the battle?

A. It was, and well executed by the Victory.

Q. Had it then the appearance of a flight?

A. No, the reverse, it was nearing the enemy.

Q. Did you see the French fleet in the morning of the 28th?

A. No.

Q. If I had chased towards Ushant in the state the fleet was in after the action of the 27th, and the weather as it was, was there a probability of coming up with the French fleet before they reached the port of Brest.

A. No.

Q. Captain Clements, you have heard all the articles of the charge read, therefore I desire you will state to the Court any instance, if you saw or know of any such, in which I negligently performed any part of my duty on the 27th or 28th of July.

A. I have long had the honour of knowing Admiral Keppel; I have ever had the highest estimation of him both as a man of honour, the best of officers, and a gallant man; but I do not conceive it possible for more to be done by the Admiral than was done during the time the French fleet were in sight.

Captain MACBRIDE of the Bienfaisant sworn.
Examined by the Admiral.

Q. What day was the French fleet first seen?

A. Between one and two on the 23d of July; I made the signal for them, for seeing them to the N. E.

Q. Did you see them the next morning?

A. The weather just opened towards seven o'clock in the morning, when I saw them in the N. W. and made the signal for so doing.

Q. Did not you come on board the Victory in a small boat, and report to me the observations that you had made?

A. I did.

Q. What were those observations?

A. As I observed before, the weather was exceedingly close and shut in again almost as soon as I had discovered them; I saw three sail of them that was considerably to leeward of the others, one had her fore-top-mast gone, the other her main-top-sail close reefed down upon her cap, from which I considered that she was crippled likewise; and as the weather had come in so exceedingly close I imagined the Admiral might not see them, which was the reason of my going down to acquaint him with their situation.

Q. Was the body of the French fleet to windward of the English fleet?

A. They were, Sir, from the N. W. to the W. and by N. Those three sail that I speak of bore about N. and by W. and was at least three leagues to leeward of the main body; there were two sail more still further to leeward than they were, and bore about N. N. E. from me.

Q. What orders did you receive from me in consequence of the report you made to me?

A. The Admiral observed that those two ships must be cut off, or the enemy must come down to support

support them; and therefore I had his order to go to Captain Maitland of the Elizabeth, that was down about a mile upon his starboard bow, and to acquaint him it was the Admiral's orders that we should chase and attack those two ships, and notwithstanding he should make the signal for the line of battle, we were to proceed on unless he made the signal for the cruisers in that quarter to return.

Q. Was the weather at that time such as to prevent ships fighting their lower deck guns under the degree of sail that fleets would fight under?

A. Most assuredly; any ship almost could have fought their lower deck guns, when I could in a six oar'd cutter carry a message from you, and drove as fast as the ships sailed.

Q. Did I soon after make a signal for a general chase, and by carrying the fleet to the northward did it not occasion a separation of two of their capital ships?

A. It did.

Q. If the French fleet had intended battle, was the prevention of such separation a great temptation to them to bring it on?

A. Most assuredly.

Q. Did the enemy at any time in the morning of the 27th to the 27th at noon, when I brought them to action, shew any indication of designing battle?

A. They never did.

Q. Did I do my utmost endeavours, as an officer, to bring them to action during those days?

A. You did, by carrying as much sail as the slow sailing ships of your fleet could possibly keep up with you.

Q. Had you been senior officer of a squadron of British ships, and you had been in sight of a like number of ships in the situation the French fleet was in with respect to the English fleet, during the 24th, 25th, and 26th of July, would you have hesitated a moment to have carried it down to battle on account of the wind and weather during those days?

A. If I had I never deserved to set my foot in this country again.

Q. After the Victory had passed the French fleet in the action, and had wore and was standing to the northward towards them again, did it appear to you at that time, or at any time while the Victory was upon the larboard tack, that I had sufficient force collected to have attacked the French immediately upon wearing, or to have interrupted their forming their line afterwards on the starboard tack?

A. You had not.

Q. Did you see the signal for tacking the line, while on the larboard tack, flying on board the Victory?

A. I did; in a few minutes after the signal for battle was hauled down, the signal for the line was made.

Q. Did you see the Formidable pass the Victory on the starboard tack, while I was upon the larboard tack, with the signal for the line flying?

A. I did.

Q. Had she passed the Victory and gone a-stern of her before I made the signal to wear to the southward?

A. She had.

Q. Did you see the signal for the line of battle on board the Victory when she was afterwards on the starboard tack?

A. I did.

Q. Had the fleet, standing to the southward under the sail they had set, and the signal for the line of battle flying, the least appearance of a fight?

A. It had not — It struck me as a manœuvre of a judicious officer, and the only one at that time in

his power, to collect his fleet, who were in great disorder, from the danger they had received, and to cover five ships that were much to leeward of the enemy, who were advancing towards them; and I attribute to that, and the judicious position Sir Robert Harland took to windward with part of the Red division, that it prevented the French advancing at a very critical time upon the British fleet. — It was a well-timed manœuvre.

Q. Could not the French have attacked the English fleet while standing to the southward, if they had chose to have done it?

A. If our good fortune had placed us in their situation, and we in their's, if we had not destroyed them we ought to have been sent to the Juititia ballast lighter.

Q. Did you observe the signals made on board the Victory in the afternoon, and repeated by the repeating frigate?

A. I did.

Q. Did the signals and motions of the Victory at any time convey to you an idea that the Admiral did not intend to renew the action upon the afternoon of the 27th of July?

A. Not in the least.

Q. Can you assign any reason why the French were not re-attacked in the afternoon?

A. I apprehended he waited for the Vice Admiral of the Blue, and his division, to come down agreeable to the signal then flying.

Q. Did the Vice Admiral of the blue bring his division down?

A. He did not.

Q. If the Vice Admiral of the Blue, with the ships of his division, had, even so late as six o'clock, bore down into his station, do you not think there was still day-light enough to have fallen upon the enemy, and attacked them, and obliged them to have surrendered, or have run away before night?

A. It certainly would have determined whether they meant to stand their ground or run away in day-light; there was still two hours and a half good day-light after six o'clock at that time of the year.

Q. What distance was the Vice Admiral of the Blue from his station at five o'clock, and how did he bear of you?

A. He was upon the weather-beam about three miles.

Q. Did any thing appear to you to prevent his bearing down?

A. His fore-top-sail only was unbent; any interior reasons I can be no judge of.

Q. How long was his fore-top sail unbent?

A. Upwards of four hours.

Q. Did he ever make any visible effort to come into the line?

A. None that I could observe.

Q. At the close of the evening how far was the van of the French line drawn up to the English fleet?

A. The tenth ship of the French van was abreast of me a short two miles to leeward.

Q. What sail did you carry during the night of the 27th, to keep in your station?

A. Close reef'd top-sail, no fore-sail, and the main-top-sail sometimes a-back, sometimes the mizen-top-sail a-back; in short we had but just steerage way; we were about a knot and a half, or two knots, so much as the ships could keep in a line, to keep our station, agreeable to the signal that was flying when night came on, to keep our station in a line of battle.

Q. Did you observe any motions of the French fleet in the night of the 27th?

A. It was very dark, there was not the least appearance of any signal till late, till between ten and eleven, when a rocket was thrown up in the center

center, and repeated from van to rear, after which every half hour, and sometimes oftener, a light was shewn, and a flash like that of a musket, and continued so till day-break.

Q. Did you see the French fleet, or any part of them, on the 28th of July?

A. I saw three sail in the morning: they were there playing their monkey tricks all night with their lights.

Q. What did you take them to be?

A. The ship a-breast of me was a line of battle; the center one, I am almost confident, was a frigate; one was a-breast of the center of our fleet, the other a great distance.

Q. How far was they off?

A. Between four and five miles; the ship nearest to me about four miles, rather more than less.

Q. Was there any ship between you and the French ships?

A. None, Sir.

Q. Were there any signals made for ships to chase them?

A. Yes, mine among others; and I did chase that ship till I was called in, so that if there had been any ships between me and her I must have seen them.

Q. Could you have pursued the chase with any effect?

A. There is no knowing what the consequence of the chase would be, whether I should have got up with her, or she out sailed me.

Q. Did you gain upon her while you did chase?

A. We chased so short a time I cannot determine that point, but as no other ships could back me, I must of course have been left with the three sail, and that was the reason, I suppose, why the Admiral ordered me back.

Q. If I had followed you in the state the fleet was in after the action of the 27th, with the wind and weather as it was, was there the smallest probability of coming up with the French fleet before they reached the port of Brest?

A. I do not think that even if our fleet had not been damaged, we could have come up with the French fleet, that had so great a start a-head, and the small run we had to chase in; for I was only twenty-one leagues from Ushant, according to my reckoning; and I beg to add, I believe half of our ships were more than a twelvemonth foul, and some of them two years I believe, and the French were rather cleaner than we were.

Q. You have heard all the articles of the charge read, therefore I desire you will state to the Court any instance, if you saw or know of any such, in which I negligently performed any part of my duty on the 27th and 28th of July.

A. I know of none—I think Admiral Keppel realized every favourable opinion that his country ever formed of him upon those days.

Cross Examination by the Prosecutor.

Prosecutor. I would ask Captain Macbride if he has not frequently passed in a Deal-cutter from ship to ship, when it was not possible to open the lower deck ports?

A. Perhaps I might; but that was not one of the days.

Q. Had it not blown very strong that night, by which one of the French ships carried away her fore-top mast?

A. It had blown strong, but I don't think that is any proof of the weather—a Frenchman's carrying his fore-top away.

Q. I would beg a question, I don't know whether it comes within the rules the Court has prescribed, as it does not arise from what the Admiral has put to Captain Macbride—I would ask with what part of the French fleet he engaged?

A. I engaged a-head of the Valiant, between the Valiant and the Foudroyant.

Q. Was that a-head of the Victory?

A. A-head of the Victory.

Q. Whether or no, in that situation, he had occasion to have known the Duke, or any other ships fired into the Foudroyant?

A. I do not; the Frenchmen did.

Q. Did the Duke?

A. No.

Q. When the Admiral was standing upon the larboard tack towards the enemy, as Captain Macbride before described, did any of the ships that were stationed in the line, a-head of him, get into their stations before the Admiral wore again?

A. They did not, because I ought to have been a-head of him myself; but as the Vice Admiral of the Blue was standing upon the starboard tack, meeting the Victory, I thought the line was going to be inverted, which kept me a-stern of the Victory, as well as the Prince George.

Q. Captain Macbride has described the van ships of the enemy's line at night to be a-breast of the Bienfaisant?

A. I believe you misunderstood, I said the tenth ship of the van at the close of the day. I believe it will turn out so.

Q. About what distance was they from your's?

A. They edged up as they advanced up the line, I believe they were rather a-start two miles from me.

The Honourable LEVESON GOWER,
Captain of the Valiant, sworn.

Examined by the Admiral.

Q. Did you see the French fleet in the morning of the 24th?

A. Yes.

Q. Was they to windward, or to leeward?

A. At first they were nearly a-head, but the wind came more to the westward and we broke off, and they came broad upon the weather-bow, that is, the body of them; for they were two broad upon the lee-bow, and another a little upon the lee-bow.

Q. Did I order a general chase?

A. Yes.

Q. Was the weather such that the Valiant carried her whole top-fails upon a wind?

A. When I first made sail I had a reef in the top-fails and soon after let that reef out, and then I had the top-gallant-stay-fails set with all the reefs out, and the top-gallant-fails upon them, and had so till a signal was made to call me in.

Q. Did I make the signal for the line of battle in the afternoon of the 24th?

A. Yes; between six and seven I think it was.

Q. Did I pursue the French Fleet from this time to the hour I brought them to action?

A. Yes; they went off as fast as they could, and we used every endeavour possible to get up to them.

Q. Had you commanded a British Fleet in the situation the French ships were in respect to the English Fleet during the 24th, 25th, and 26th, would you have hesitated a moment to have led it down to battle on account of the wind and weather during any part of those days?

A. I certainly should not have hesitated.

Q. Was there on the 27th in the morning any greater indication of the French Fleet designing to come to action than on the preceding day?

A. No.

Q. What, in your opinion, would have been the consequence if I had formed a line of battle early in the morning of the 27th, instead of bringing up the leeward-most ships by signal to chase?

A. They would have got clear off without ever being brought to action.

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Q. I am

Q. I am charged with having stood to a great distance beyond the enemy before I wore to stand towards them again; I desire to know of you whether that fact is true?

A. It is not true; for you wore in ten minutes after the firing ceased from the Victory, or thereabouts.

Q. Do you mean the signal for wearing or the wearing itself?

A. The signal was made.

Q. Did I make the signal for the line of battle as soon as I had wore?

A. Immediately after having passed me the signal for the line of battle a cable's length asunder, went up.

Q. Was that the properest signal I could make to collect the fleet together?

A. I think so.

Q. I am charged with having shortened sail instead of advancing to the enemy; I desire to know if I had a sufficient force collected to have admitted of my advancing faster than I did?

A. The Valiant was not in a condition to make sail for near an hour after I came out of the fire, and there were several ships southward of the Valiant.

Q. Did you see the French Fleet wear and begin to form a line upon the starboard tack?

A. Just as I made sail upon the larboard tack to stand after the Victory, I was told the French ships were wearing; I went to look at them, and saw two or three of them had got round upon the starboard tack and others seemed to be wearing and following; I believe some were before the wind and some upon the larboard tack, some one way and some another, and seemed to be going to form their line upon the starboard tack.

Q. Had I a sufficient force collected at this time to have prevented their forming?

A. No, you had not.

Q. I am charged with having wore at this time improperly and made sail directly from the enemy, was it so or not?

A. The enemy soon edged away for four or five of our disabled ships that were to the southward, and soon after you wore you kept away for those disabled ships to prevent their cutting them off, I suppose, and steered about parallel with the French in general; it might be sometimes a little more up and sometimes a little more away; I soon got into my station a-head of the Admiral, and when I was a-head of him he went directly down for those disabled ships.

Q. Did I make every necessary signal to form the line and collect the fleet upon the starboard tack?

A. Yes; I think so, the signal for the line of battle was made.

Q. And the signal for ships to get into their stations?

A. Yes, I think so.

Q. Can you recollect what sail the Victory carried after being on the starboard tack?

A. Double-reefed top-sails and fore-sail, I think.

Q. Did not the sail I carried admit the head-moat of the French Fleet to range up with me under their top-sails?

A. In general he (the French Admiral) had his top-sails set only; he once set his fore-sail with a stay-sail forward for a little while, then he backed his mizen-top-sail and hauled up the lee clew-garnet with his fore-sail; the second ship never set his fore-sail at all.

Q. What sail did the Valiant carry when a-head of me upon the starboard tack?

A. Double-reefed top-sails, the fore-tack aboard, the fore-sheet sometimes hauled aft, sometimes the clew-garnet hauled up, sometimes the mizen-top-sail a-backed.

Q. Had this manœuvre of the English Admiral, as you have stated it, the least appearance of a flight?

A. Not in the smallest degree.

Q. Could not the French Fleet have attacked the British Fleet at any time, if they had thought proper, during the whole afternoon?

A. Certainly.

Q. What distance was the Vice Admiral of the Blue from his station at five o'clock?

A. He was broad upon the weather quarter between two and an half or three miles from the Valiant.

Q. Did any thing appear to you to prevent his bearing down?

A. The Formidable's fore-top-sail was unbent, but I saw no masts or yards gone.

Q. How long was the fore-top-sail unbent?

A. I never saw it bent, but it might have been bent between seven and eight o'clock; for after I gave over all thoughts of action I never troubled my head about any body.

Q. Did the Vice Admiral of the Blue make any signal to inform the Admiral he was disabled?

A. Not that I saw.

Q. Did you ever see him repeat the signal for the line of battle in the afternoon?

A. I never saw any thing, any signal on board the Formidable in the afternoon but a blue flag at the mizen-peak, besides pennants; there were pennants in the evening.

Q. Can you assign any reason why the French Fleet were not re-attacked that afternoon?

A. Till about four o'clock very few ships were with the Victory, and from that time till night the rear division did not come down into their stations, with an exception to two or three, till pretty late.

Q. Do you think then I should have renewed the battle that afternoon, if the Vice Admiral of the Blue had led his division down?

A. From your very spirited behaviour before that, I have not a doubt about it.

Q. What sail did you carry to keep in your station during the night of the 27th?

A. Three top-sails and fore-top-mast stay-sail and sometimes the mizen-top-sail a-back.

Q. Did you see the French Fleet in the morning of the 28th?

A. I saw only three sail.

Q. If I had chased towards Ushant in the state the fleet was in from the action of the 27th, and the wind and weather as it was, was there the smallest probability of coming up with the French Fleet before they had reached the port of Brest?

A. I think not.

Captain Leveson. Your station being near me during the pursuit of the enemy and upon the day of action, it gave you an opportunity of observing my conduct and seeing objects nearly in the same point of view with myself, I desire you will state to the Court any instance, if you saw or know of any such, in which I negligently performed any part of my duty on the 27th or 28th of July.

A. I don't know any such instance; I then thought, and I now think that your whole conduct was spirited, able, and great.

Cross Examination by the PROSECUTOR.

Prosecutor. Captain Leveson has stated, that when the Admiral wore and stood towards the enemy, that he had not a force collected sufficient to advance with, or to interrupt the French in forming their line; I should be glad Captain Leveson would account for the whole of the Admiral's own division, and such part of the Vice of the Blue's division that joined him during the battle and went out to battle with him, and the reason why they could not have supported him, if he had continued to go on?

A. At

A. At that time there were five sail to the southward of me, one of which was a three-decked ship, the Sandwich I believe, I am not sure of the ship; the Elizabeth I passed, she was standing upon the starboard tack, and there was another ship upon my lee-beam abaft the beam, at that time still standing with her head to the southward, and there were two of the Vice Admiral of the Red's division, one with her fore-top-sail-yard gone, and another, I don't know whether with her main-top-sail gone, (she had no main-top-sail set) or what was the matter, but there she was; it was the Berwick; and my ship was between two and three miles from the Admiral at that time with her fore-top-sail-yard gone and cross-jack-yard and main-sail gone all to pieces, the main-sail went all to pieces and the foot of the fore-sail was cut, the mizen-yard was gone and every stay in the ship, and every brace and bowline but the fore-mast-stay, five main shrouds, and five fore-shrouds and three or four mizen-shrouds were cut: I only mention it that you should understand the reason of my being there.

Q. Then by Captain Leveson's account there was two of the Red division among them, besides the ships I mentioned?

A. They were to windward those two ships that belonged to the Red, but separated from the others, which were a long way off.

Q. Was the rest of the Red division in a situation, and so far as appeared to you, in a condition for immediately re-attacking if it had been thought right so to do.

A. I was not near enough to see that, Sir; they were a long way upon my weather-bow; the Admiral was upon my weather-bow, and they were to leeward of me a good way; they were too far for me to judge of their condition; that is, the ships that were with their Admiral the Vice of the Red.

Q. Was not the Red division, Sir, last engaged of any of the three divisions, and the first out of the engagement, consequently the soonest fit and least damaged for re-action?

A. They certainly were the first out of action, how much they had had of it I really cannot tell.

Q. In answer to a former question of the Admiral's not having force about him to enable him to advance, do you attribute that to the ships not being able to close with him?

A. I do; I judge from my own situation; I could not.

Q. Then from the account of the condition of our ships and their situation, are we to understand that the British Fleet was so much beaten that they were not able to renew the attack, or offering to do it as soon as the French did?

Admiral Montagu. I do not understand that Captain Leveson has said so.

The Admiral. Captain Leveson will answer it.

Admiral Montagu. He has not said the French renewed the action or offered it; on the contrary he said they did not.

A. About four o'clock a great many ships had got into their stations, a great many, I suppose they were only cut in the manner I was myself, and so they joined as fast as they got to rights, and after that I don't know any reason why they might not (the Admiral's division kept all together) except what I mentioned before, Sir, that your * division did not come down; but I do not pretend to say why they did not, but can only say they did not.

Q. The time you are speaking of, four o'clock, was not the Red division formed in the station of the Vice Admiral of the Blue?

A. Yes, Sir; but they soon after went a-head.

Q. Was not the Vice Admiral of the Blue and part of his ships the last that came out of action?

A. Certainly, Sir.

Q. Can you suppose any other reason for the Admiral's ordering the Red division into the station of the Vice of the Blue, but that of his being just come out of action, or that he had from appearances to him, reasons to suppose or conclude they were not capable of taking their stations at that time?

A. I really cannot tell; I don't know that the Vice Admiral of the Red was ordered there, I only know that he was there: Do you mean at four o'clock?

Q. I am speaking when the Vice of the Red did come into that station, supposing it to be with the Admiral's orders?

A. I don't exactly know when he did get there, I saw him there at four o'clock; you must have been a great while out of action at four o'clock.

Q. Captain Leveson I think has mentioned his observing three of the French ships that first drew out of the line?

A. When I went and looked there were two or three I saw upon the starboard tack.

Q. The question is grounded upon what you said: Did you observe those two or three ships first shape their course directly for the Formidable then laying with her head towards the enemy, within gun-shot of the rear?

A. Not having occasion to look for the Formidable I did not look for it; I cannot tell, I was in the Admiral's division; I don't exactly know when those two or three ships drew out, it could not be above ten minutes or a quarter of an hour when I went to look at them; they seemed to haul up; in four or five minutes after they told me they had bore away; when they went off they steered two or three points from the wind more than they had done before.

Q. Did you observe them to range up under the lee of the Vengeance, a ship that was left a great way a-stern and fire at her, and afterwards point towards the ships to leeward you have mentioned as crippled ships?

A. No; I never saw any fire after passing them upon the different tacks.

Q. Were those the ships that became the leading ships of their new-formed line?

A. I think they were, Sir; but there were intervals I never looked at them; I did not look at them.

Q. If those ships, Sir, had been attacked, would not that have effectually secured any of our ships that were supposed to be crippled, and have prevented them forming a new line?

A. Those ships could not have been attacked without attacking the whole of the French Fleet.

Q. Do you attribute the ships that were left so far a-stern as the Vengeance and the Formidable, you have mentioned being three miles a-stern from where you were quartered, do you attribute her distance to that of the Victory's out-sailing them, or that the others were not able to carry sail to keep up with them?

A. I never said the Formidable was a-stern, I said broad upon the weather-quarter.

Q. Is not that being a-stern?

A. No, Sir; rather abaft my beam about two or three points.

Q. Did you set her by compass?

A. No; I saw her as I walked the quarter-deck, and I think she must have been very broad upon the weather quarter:—By a-stern I meant nearly the wake.

Q. At what time did the Red division quit the rear?

A. It was between four and five, I believe, Sir; it was after I got into my station.

Q. Are you positive as to the time when the Red division quitted the rear and went a-head?

A. No

A. No; I cannot be exact.

Q. Upon recollection do you think it was not later?

A. No; upon my word, Sir, I don't know; it was between four and five, to the best of my recollection, but it was nothing that concerned myself, and therefore I cannot say more than to the best of my knowledge and belief it was some little time after I got into my station; I got there by four o'clock.

Q. I think you said, Sir, you did not see the signal for the line of battle on board the Formidable, but that you saw the blue flag at the mizen-peak?

A. No, Sir.

Q. Upon your recollection, whether you can recollect, so as to speak with precision, whether that blue flag at the mizen-peak was not hoisted under the signal for the line of battle?

A. I am very sure it was not when I saw it; I did not look at the Formidable from first to last, but when I saw the Formidable it was not; there was a blue flag, but nothing over it.

Q. May not Captain Gower, at this distance of time mistake in his remembrance; there was a time of that flag being hoisted in the afternoon, before the evening, the time we are speaking of, whether he might not be thinking of that?

A. I must say it is a very extraordinary question, Sir, when I positively said when I saw it, and I have told you I did not look at the Formidable from first to last.

Admiral Arbuthnot. But you have said you never saw the signal flying on board the Formidable?

A. I say, when I saw the blue flag there was no other flag flying there at the time.

Prosecutor. I don't mean by any means to lay you under any difficulty in answering the question.

A. You must see, Sir Hugh, there is a difficulty in forcing me to it.

Prosecutor. Then let it stand as it does.

A. I answered the question before, and I beg that may go as my answer.

Captain JOHN JERVIS of the Foudroyant sworn.

Examined by the Admiral.

Q. From my first seeing the French Fleet to their being brought to action, did they shew any intention of coming to battle, or did they always avoid it?

A. On the 23d of July in the afternoon, when the French Fleet was first discovered by the English Fleet, I did think that they shewed a disposition to give battle; from the 24th in the morning, as soon as they discovered the force of the English Fleet, I am convinced they never did design to give battle.

Q. Did I do my utmost endeavour as an officer to bring them to action from the morning of the 24th till they were brought to action?

A. You used your most unremitting endeavours.

Q. Had you commanded a British Fleet in the situation the French Fleet was in respect to the fleet under my command during the 24th, 25th, and 26th, would you have hesitated a moment to have led it down to battle upon account of the wind and weather, upon any part of those days?

A. Any officer that had hesitated a moment would have been unworthy a command in the British Fleet.

Q. Do you remember a signal being made in the morning of the 27th of July for several ships of the Vice Admiral of the Blue's division to chase to windward?

A. I do.

Q. Was there at that time any greater indication of the French fleet designing to come to action than on the preceding days?

A. There was not.

Q. What was the position of the Vice Admiral of the Blue and his division at this time?

A. To the best of my recollection the Vice Admiral of the Blue in the Formidable was upon the leeward bow of the Foudroyant, at the distance of three miles and an half, or thereabouts.

Q. What in your judgment was the object of that signal, and do you think it was a proper one under the circumstances in which it was made?

A. As I made reflections upon the signal at the time it was made, I have no sort of difficulty in answering that question. I observed at the time, it was made to combine the division of the Vice Admiral of the Blue with the center division.

Q. What in your opinion would have been the consequences if I had formed the line of battle early in the morning, instead of bringing up the leeward-most ships by the signal to chase?

A. I am clearly of opinion that you would not have brought the French fleet to action that day.

Q. Did you see the French Fleet upon the larboard tack just before the action began.

A. I did.

Q. Was not our getting within reach of the enemy very sudden and unexpected, from a shift of wind?

A. That was the principal event which produced it.

Q. What would have been the consequence if I had formed a line of battle at this time?

A. You would have given time to the enemy to have got into some form when they were in great disorder, and thereby have subjected our fleet to an attack before it could have been brought into order, or have given the French an opportunity to have escaped out of gun-shot, if they had been disposed so to do.

A. As I am charged with having advanced to the enemy and made the signal for battle without having formed a line; I desire you will inform the Court whether you think I was justified in doing so under all the circumstances you have stated?

A. To the best of my judgment and ability you certainly was.

Q. I am charged with having stood to a great distance beyond the enemy before I wore to stand towards them again, I desire to know of you whether that fact be true?

A. It is not true.

Q. Did I make the signal for the line of battle as soon as I had wore?

A. You did.

Q. Was that the properest signal I could make to collect the fleet together?

A. It was the properest signal and the signal that required the most prompt obedience.

Q. I am charged with having shortened sail instead of advancing to the enemy; I desire you will acquaint the Court whether I had a sufficient force collected to admit of my advancing faster than I did?

A. To the best of my recollection, when I approached you upon the larboard tack a little before three o'clock, you had not more than two or three ships about you of your own division, and the rest were at a considerable distance a-stern.

Q. Had I at any time while I stood upon the larboard tack a sufficient force collected to renew the fight?

A. You had not.

Q. Did you see the Formidable at any time on the larboard tack at any time after the action?

A. I did not.

Q. Did you see the French Fleet wear and begin to form their line upon the starboard tack?

A. I did.

Q. Had I at this time a sufficient force collected to have prevented their forming?

A. You

A. You had not the means in any fort.

Q. I am charged with having wore at this time and led the British Fleet directly from the enemy; I desire you will explain this matter to the Court?

A. It appeared to me at the time, that you had two great objects in view, in wearing the British fleet and standing as you did; the first and principal one was to cover four or five disabled ships of your fleet in the S. S. E. and the other was to give opportunity to the Vice Admiral of the Blue and his division to form in their station a-stern of you.

Q. Did I make every necessary signal to form the line and collect the fleet upon the starboard tack?

A. I do not know a signal which you could have made which you did not make, to produce that effect.

Q. What sail did I carry during the afternoon?

A. To the best of my remembrance you carried your double-reefed top-sails and fore-sail, the latter much shot as well as the fore-top-sail.

Q. Was not the sail I carried necessary for the protection of the disabled ships, and could the sail I carried possibly have prevented the Vice Admiral of the Blue from coming into the line?

A. The sail you carried appeared to me well-proportioned to effect both those purposes.

Q. Did not the sail I carried permit the French fleet to range up with me under their top-sails?

A. It did.

Q. Had this evolution, or my subsequent conduct, as you have stated it, the least appearance of a flight?

A. Very much otherwise.

Q. Could not the French fleet have attacked the British Fleet at any time they thought proper during the afternoon?

A. They could; and at some periods of the afternoon with great advantage.

Q. Where was your station in the line of battle a-head upon the starboard tack?

A. The next ship a-stern of the Victory.

Q. When did you get into it, and did you preserve it?

A. I got into it as you wore, at or about three o'clock, and I never was out of it till four o'clock the next morning.

Q. Did you think I intended to renew the battle if I could have formed my line?

A. I did; and as a proof of it I turned my people up, thinking it advisable to say a few animating words to them.

Q. What prevented my forming the line?

A. The Vice Admiral of the Blue not leading his division into his station.

Q. Was he in a situation to have led his division into his station?

A. He appeared so to me.

Q. Did any thing appear to you to prevent his bearing down?

A. There was nothing visible to me but a fore-top-sail unbent.

Q. How long did you observe the Formidable's fore-top-sail was unbent?

A. To the best of my remembrance it was near four hours unbent, I cannot speak positively to time; it appeared to me so the greatest part of the afternoon after we were upon the starboard tack.

Court. Could he have got into his station under his main-top-sail and fore-sail?

A. I believe he could.

Q. How many points might he have kept away, do you think?

A. About four points; I think he appeared to me to be always in the wind's-eye of his station.

Q. Did the Vice Admiral of the Blue ever make any signal to inform the Admiral that he was disabled?

A. I never saw any such signal.

Q. Did you ever see him repeat the signal for the line of battle?

A. I did not.

Q. What sail did you carry in the night of the 27th to keep in your station?

A. We had double-reefed top-sails pretty much shot, so as to make it dangerous to hoist them taught up, and I think there was at least a reef wanting in the hoisting. I don't recollect any other sail but the fore-sail bent, for a mizen the main-top sail was frequently a-back to keep a-stern of the Victory, and a very difficult operation it was to preserve the line.

Q. You have mentioned your fore-stay-sail bent for your mizen. Was your mizen-mast damaged?

A. The mizen-mast had been shot away just under the cap; the mizen-yard had been also shot away.

Q. Have you got the bearing and distance of Ushant on the 28th?

A. I cannot speak to time from memory. On the 28th, Ushant bears north 79 degrees, east 29 leagues, by the log that day.

Q. Captain Jervis, your station being nearest me during the pursuit of the enemy and after the action, which gave you an opportunity of observing my conduct, and seeing of objects nearly in the same point of view with myself, I desire you will state to the Court any instance, if you saw or know of any such, in which I negligently performed my duty on the 27th or 28th of July.

Captain Jervis. With great respect to you, Sir, and great deference to the Court, I hope I shall be indulged with having that question put by the Court.

Court. Mr. Judge Advocate, please to put that question as coming from the Court.

Judge Advocate. Your situation being nearest to Admiral Keppel during the pursuit of the enemy and after the action, which gave you an opportunity of observing his conduct and of seeing objects nearly in the same point of view with himself, you are desired to inform the Court of any instance, if you saw or know of any such, in which the Admiral negligently performed any part of his duty on the 27th or 28th of July?

A. I feel myself bound by the oath I have taken to answer that question, I believe it to be consonant to the general practice of sea Courts Martial. I cannot boast of a long acquaintance with Admiral Keppel, I never had the honour of serving under him before, but I am happy in this opportunity to declare to this Court and to the whole world, that during the whole time that the English Fleet was in sight of the French Fleet, he displayed the greatest naval skill and ability, and the boldest enterprize upon the 27th of July; which, with the promptitude and obedience of Vice Admiral Sir Robert Harland, will be subjects of my admiration and my imitation as long as I live.

The Court desired Captain Jervis would relate the damages done to his ship on the 27th of July, in the action with the French fleet.

A. The main-mast, one shot very near through the head of it on the starboard side, which pressed one of the cheeks of the mast, went through the heart of the mast, and lodged in the other cheek; there were several other shot in the main-mast, but not of so much consequence as that. The fore-mast had several shot in it. The bowsprit had an excavation about nine inches in the lower side of the center of the bowsprit, which was shot away. The fore top-mast was so much wounded as

X x

obliged

obliged us to reef it. The mizen-mast was totally disabled, that was of very little consequence to the Foudroyant. The running rigging was, I believe, every rope cut, and the shrouds demolished in a great measure. I cannot exactly say what quantity, there were no braces or bowlings left, scarce a hallyard. The fore stay spring, stay and top-sail ties, hall-yards, in short, I cannot speak to any other particulars, the sails were very much shattered, particularly the top-sails.

Court adjourned till ten the next morning.

The 27th Day's Proceedings, February 6th, 1779.

Captain JOHN JERVIS called again.

Captain Jervis. Before the Court proceeds I should be very glad to make a small addition to the minutes of the answer to one of the last questions of yesterday, respecting the sails of the Foudroyant and the shot, as it is not properly explained.—The foot-rope of the fore sail was shot away, which I consider as a very material damage.

Court. You explained the damages of your ship very sufficiently before.

The Admiral. On the 28th in the morning did you see the French fleet?

A. I did not see the French fleet, I saw three sail of the French fleet; and some time afterwards the man at the mast-head said he saw eight sail bearing south-east, pointing to those bearings.

Q. Did you see any signals made to chase the French ships?

A. To the best of my remembrance I saw the signal made for three sail to chase to the south-east, to the best of my remembrance.

Q. Was your ship in a condition to have chased?

A. She was not.

Q. If I had chased towards Ushant in the condition the fleet was in after the action of the 27th, in their masts, yards, and sails, was there any probability of coming up with the fleet of France before they reached the port of Brest?

A. There certainly was not the smallest probability.

Cross Examination.

Prosecutor. I think Captain Jervis on his examination yesterday said, that on the morning of the 27th the enemy shewed no more disposition for engaging than on the preceding days; I would ask Captain Jervis if it appeared so to him, why it appeared to him necessary for to take seven of the Vice Admiral of the Blue's division from him, and combine them with the center division upon that day any more than any other day?

A. I have stated in my answers to that question that the Vice Admiral of the Blue and his division were three miles and an half to leeward of the the Foudroyant, which would give them three miles to leeward of the Victory, they were under a very slow sail, with their main-sails up; the Formidable, I believe, with her main-sail up, and, to the best of my recollection, going still farther to leeward, and I apprehend it was absolutely necessary for them to make more sail to windward in my opinion. I don't know whether that is a full answer; if not, I would add farther, if the Court will give me leave to tell the prosecutor, in my judgment (and I believe I made the observation upon it at the time) the Vice Admiral accepted the meaning of the signal, for he certainly did make a considerable deal of sail soon afterwards in obedience to the signal.

Q. If my memory don't deceive me, Captain Jervis alters his account of the position of the Vice Admiral of the Blue very different from what he said yesterday; if I don't mistake, he said they were at the Foudroyant's lee-bow at three miles distance, now he conveys the idea they were wholly three miles to leeward?

A. I did not mean to quibble about an idea, or to convey any idea that was not exactly true; when I said upon the lee-bow, I did not tell you what point of the lee-bow, it is a very common expression; to the best of my recollection I was very near the beam of the Victory, I was a-bast the beam, but not much: I don't mean to take any advantage of you, Sir, I am sure; or to say any thing in favour of the Admiral that was not exactly true; all I wish, by the answer I have given, is to convey to the Court, that the Formidable was much farther to leeward than her station in the order of sailing prescribed, Sir; that is precisely my idea.

Q. If those ships had been permitted to remain with their proper Admiral, might not they have gone into action with him, as he did, and in the same place where the Commander in Chief began action?

A. I see no reason why they could not, Sir; I am not a very competent judge of that part of the fleet; but I must beg leave to state to the Court the cause that brought the fleet into action at all, which cause did not exist when those ships chased.

Q. If you please, Sir.

A. To make it as short as possible I would wish to fix it, as it is really a fact, upon a very trifling shift of wind in our favour, I believe for four hours after those ships chased.

Q. I desire Captain Jervis to take the trouble to look at his own ship's log-book, and inform the Court how much the wind shifted from six o'clock to ten by the log-book, which is on the table I believe.

A. It shifted at eight o'clock one point as it stands here, and it shifted between eight o'clock and twelve four points.

Q. Which way?

A. In favour of us.

Q. From eight to twelve?

A. From eight to twelve; at eight at S. W. at twelve at W. S. W. I don't suppose a very great stress will be laid upon a shift of wind while we were in action; here it stands so; I never have looked into this log-book since the day of action, I believe, before; the shift of wind brought us up; a great deal was due to the evolution performed very successfully; the tacking of the fleet together was performed beyond my expectation; but we certainly kept looking up for them during that time; after we were about, we continued to look up better and better for them.

Q. You speak upon your oath?

A. I look'd at no minutes, I only speak from the ships looking up; I govern myself from the ships looking up, not from the wind itself.

Court. Speak of what you saw at that time?

A. I speak of the influence that it had upon me, Sir; I don't speak to the points, or wind, or points of the compass, at this distance of time; I don't refresh my memory by log-books, or any thing else, for I looked at none.

Prosecutor (looking at the log-book). It was S. W. at eight, and S. W. at ten.

Court. The prosecutor has a right to look at the log-book, but I don't see any body has a right to take down any thing from it.

Prosecutor. How was it at twelve on the 27th by log?

Captain

Captain Jervis. I pay no regard to my log-book whatever, or any consideration upon earth; I don't pay that attention to a log-book, as to swear by the log-book, or by any such thing as that; when officers are attentive to the orders of their Commander in Chief, they don't put down every thing, it is impossible, except accurate people were placed there for that purpose: I have no minutes, I bring nothing but the charge, I have no other thing to guide me.

Captain Duncan. Captain Jervis has over and over again said he does not want the assistance of a log-book, and why it should be gone into I cannot say.

Q. Captain Jervis said it shifted one point between six and ten.

A. I did not say so; the log-book says so, but I will not be bound by that log-book, or any thing said by it; I desire to be understood perfectly, that I will not be bound by any thing that you repeat out of that log-book, or I have read to you by your orders, which I am very ready to obey in every thing that is proper.

Captain Jervis. I desire it may be understood, there is something very insidious in that way of describing what I said; I read it from the log, and if I made a mistake you will not charge me with saying so: I apprehend the Court is satisfied with my answer.

Prosecutor. I only meant that Captain Jervis might correct his mistake; he did not mean to say four points.

Admiral Montagu. Captain Jervis had better say, I will not look at the log-book at all.

Prosecutor. I mentioned it that Captain Jervis might correct that mistake; S. W. to W. S. W. is two points only.

Admiral Montagu. Shut the log up, let us hear his evidence without it.

Prosecutor. I only meant you should set that mistake right; I could mean nothing else, Sir.

[The Judge Advocate corrected the mistake from four to two points in his book.]

Admiral Montagu. Suppose in half an hour after it might vary five points, they were looking at the enemy, and only kept luff, luff, luff, and took no notice of it.

Prosecutor. I would ask Captain Jervis if he ever knew or ever heard of a Commander in a third post of a fleet to have his ships drafted from him, and he left to go into action unsupported with his own division?

A. Before I answer that question, I must beg leave to observe to the Court, I don't know such a fact existed upon the 27th of July; I certainly did hear of such a thing, but I would have it understood I do not admit of the fact to be so.

Q. I would ask Captain Jervis whether the French fleet's manœuvre in wearing did not contribute to the bringing them to leeward, and occasion the British fleet to lay better up with them than if they had not done so?

A. Before I answer that question, I must beg you will fix the period of their wearing.

Q. If they wore at any time before the time of coming to action?

A. I saw them wear at eight o'clock; between eight and ten I saw them in the operation of wearing, and they certainly did fall to leeward by that wearing, there is no doubt of it; the circle described in wearing must have brought them farther to leeward than they were before, there is no doubt of it.

Admiral Arbuthnot. Notwithstanding that, I think you said you could not even then fetch the van of their fleet, that many fired at random at you?

A. I have given no such answer, I believe.

Q. Could you fetch the van of the French fleet immediately after wearing the first time?

A. No, Sir.

Q. When you came into action did you fetch the van of the fleet?

A. No, Sir, not in that ship I commanded.

Q. I mean to be understood, if our fleet came close enough to be fired upon by the French; they passed a great part of the van of their fleet at random shot, which you could not fetch?

A. A very considerable part of their fleet passed a vast way to windward; there were many circumstances between that operation of wearing and coming to action.

Q. I am telling you, notwithstanding they did wear, and you tacked altogether, a considerable part of the French passed to windward of you, which you could not fetch up?

A. The enemy were then going upon the starboard tack, the Vice Admiral understands me, I dare say; the French were then going upon the starboard tack.

Q. And you upon the larboard tack?

A. By no manner of means; it was in the morning while both fleets were upon the larboard tack; I will explain it to you, if you wish it.

Q. I beg the first question that gave rise to that idea may be read, for I understood the Vice Admiral says, in their wearing did not they lose a great deal of ground? the answer of Captain Jervis is, that the segment of the circle they made must have brought them together: my question is, Notwithstanding all this, you could not fetch some of them; all this was before you come to action?

A. Yes.

Q. I understood the Vice Admiral's question to be, was not that the cause of the French fleet's being so near him?

A. No, that is not exactly the question, or else I misunderstood him.

[The Judge Advocate read the questions, Whether the French fleet's manœuvre in wearing did not occasion, &c.

The Answer. I must beg you will fix the period.

Q. If they wore at any time before the time of coming to action?

The Answer. I saw them between eight and ten in the morning, &c.

Then the question from Admiral Arbuthnot follows,

Notwithstanding, could you have fetched the van of the French fleet at that time?

The Answer is, No, not in the Foudroyant.]

Prosecutor. Captain Jervis was going to say there was another manœuvre of the French fleet, I should be glad he would mention what it was?

A. That manœuvre was very much obscured by thick weather; but, to the best of my belief and judgment, it was an attempt to perform the same evolution they had observed performed successfully by our fleet, with intent to pass us and avoid us; several of them tacked, and others missed stays, so that I ascribed the confusion they were in.

Q. The distant view of a fleet changing their position from one tack to another, does it not naturally give an appearance of confusion, though they may be performing their evolution successively in the wake of each other, part standing one way, and part another?

A. It unquestionably does; but the disorder in part of the center and rear continued till they passed me, during the whole time I was in action;

I don't

I don't speak of confusion, but disorder it certainly did, for they were in no line.

Q. Can Captain Jervis say, that while the French were upon the starboard tack, after having wore, as he has described, whether during the time they were upon that tack they did not lead large?

A. I cannot speak positively to that fact, any farther than by describing that in the act of wearing they certainly were leading large, but afterwards I do not recollect their leading large; during the operation of wearing they certainly were leading so, to be sure; something from the wind in the act of wearing; I don't recollect it struck me they failed large after the wearing; these are a sort of observations I cannot tell exactly.

Q. An officer in the van might distinguish that better than you?

A. It did not strike me at all; I wish to be understood, I did not mean to say I saw the fleet lead large after the whole were wore.

Q. Captain Jervis cannot say whether they did or not?

A. I do not recollect.

Q. Captain Jervis, I think, has said, if the fleet had formed in a line of battle, an action could not have been brought on that day; I would ask Captain Jervis whether, if the Admiral had made the signal, as appointed by the eleventh Article of his fighting instructions, the additional fighting instructions for the ships nearest to the enemy to form into a line (which is the charge) without regard to the general form described, and to have attacked in that manner, might not the other ships following fall likewise into a line, and so have attacked, would not our ships have engaged with more advantage than in the promiscuous manner they did?

President. I am to tell you, when you are asked to matter of opinion, you may or not answer it.

The Admiral. I have no objection to the question being answered; I could answer it if I was upon oath myself.

Captain Jervis. Will the Court allow me to make one observation upon one part of the question?

Court. Captain Jervis has said before, they would not have engaged at all; that question is answered in my opinion.

Admiral Montagu. I beg the eleventh Article may be read of Admiral Keppel's fighting instructions, the additional instructions.

The Judge Advocate read the eleventh Article as follows: If at any time when the whole fleet is to chase, or a certain number of ships nearest the enemy drawing in a line of battle a-head are to chase, the ships in the rear endeavouring to get up their rear; I will hoist a white flag, and fire a number of guns; when five ships, I will fire one gun; when seven ships, I will fire two guns; then those ships are immediately to form the line without any regard to seniority, or the general form prescribed, but according to their distances from the enemy; that is to say, the headmost and nearest ships to the enemy to head, and the sternmost to bring up the rear, that no time may be lost in pursuit, and the rest, as they come up, without regard to the general form.

Court. The answer to a former question asked to Captain Jervis, was, no other manœuvre than what the Admiral made use of, could have brought on the action that day, therefore the Vice Admiral's last question is answered.

The Admiral. I have no objection to the Vice Admiral's answering it.

Admiral Montagu. The Court has an objection to it, because it is deviating from their former resolution.

The Admiral. I will tell the gentleman any

thing he wants to know; there is nothing in the world I would not readily tell him.

Admiral Montagu. If the Vice Admiral acknowledges it, it goes no farther.

The Admiral. If the question stands, let there be an answer; if it does not stand, there is an end of it.

Admiral Montagu to the Prosecutor. Would you let the question stand?

Prosecutor. Yes; with this, it was understood to be answered before.

Prosecutor. The next question really looks like a repetition of the former one, but the purport is not so; I would ask Captain Jervis, if the rear division, that is, the Vice Admiral of the Blue and his division, had remained together, and engaged in the like manner in a connected body with their own Admiral, as the other Admirals of the fleet did, would they not have supported each other, have done more execution, and suffered less than by engaging singly and separately?

President. I think he said, if they had remained together.

Admiral Arbuthnot. He said he had been permitted to remain.

President. They never were together, and therefore could not be permitted.

Captain Jervis. I have no sort of objection to answering the question as it stands; though I did not know that any part of the question did really exist.

Q. Then I would ask Captain Jervis, whether the ships who chased by signal, were not by that means separated to a distance from their Admiral more than they were before, and at distances from each other, different from what they were before?

A. I did not know it existed when the Vice came into action; I did not know it at the time, that is precisely the fact; I am not a competent judge of that part of the fleet; I was very attentive to the Admiral.

Q. After the action was over, and the Admiral had laid his head to northward again, what was the situation of the Red division at that time, or rather at the time before the Admiral wore a second time?

A. I shall beg leave to answer the first part of the question; first, in the Foudroyant, I weathered a great part of the Vice Admiral of the Red's division, when I say a great part, I mean four or five sail, I was very covetous of the wind; for, disabled as I then was, I conceived the advantage of the wind could only carry me into action again; when I approached the Admiral on the larboard tack, I believe it was near three o'clock; when I got upon his weather-beam, I observed the Vice Admiral of the Red with part of his division upon my weather-beam, or thereabouts; but I cannot speak precisely to a point or an angle of the ship.

Q. They were to windward?

A. Yes.

Q. Were they a-head withal?

A. I cannot say they were a-head of me; I don't think they were a-head of the Victory, if they were, they were very little; but to this particular circumstance, the distance of time is so great, I cannot recollect; there were some things that struck me very forcibly, I do recollect; but there are many others my memory does not go to by any means; I little expected to be called upon this occasion, or else I might have remembered them better.

Q. I think Captain Jervis, in his cross examination has said yesterday, that while the Admiral was standing towards the enemy, upon the

the larboard tack, he never had a collected force proper to advance with; that none of the ships took their station in the line of battle; (if I mistake, Captain Jervis will be so good as to correct me in the manner he stated yesterday) that the Admiral made the properest signal for collecting his ships together, which was the signal for the line; I would ask Captain Jervis, if, while the Admiral was upon that tack, he ever made a signal for ships to windward to bear down, or for any particular ships to make more sail, or a signal for observing any particular ships being out of their stations?

A. There is one part of the question that, I believe, does not come exactly out of my evidence yesterday, which is, that none of the ships took their station in the line; I believe the fact to have been so, but I don't recollect I said so, it is very immaterial; I don't think any ships took their stations in the line upon the larboard tack; I am sure I did not do it, I could not do it; but the question may stand as it does; my answer is, I did not see those signals the Vice Admiral alludes to; if they had been made, very few ships could have obeyed them from the situation they were then in, I am sure I could not.

The Admiral. The signal for the line is established by the former evidence.

Q. Captain Jervis said, he saw the French Fleet wear and stand to the southward; I would ask Captain Jervis, if he can give any reason why it was necessary to require an exact line of battle for advancing and attacking the enemy at that time, more than it was requisite in the morning?

A. The Admiral is charged with not collecting his ships together, and to keep so near the enemy as to renew the battle as soon as it might be proper. In reply to that part of the charge, I say, the Admiral made the signal for the line of battle, which, in my judgment, was the properest for calling the ships together for the purpose of renewing the action, or for any other purpose of conducting the fleet to the enemy, at that time disabled as the fleet then was.

Prosecutor. That is repeating an answer to a former question.

A. Sir, it is the answer I chuse to give.

Cross Examination.

Q. Then I will ask Captain Jervis, if I am to understand from his account in general, that the condition of the fleet was such, that it was not proper to face the enemy to renew the attack, when they stood towards us, before they formed into a line?

A. The fact is, that we did face the enemy, Sir.

Q. But while they were facing us, did not we wear, and stand the other way our fleet?

A. We were, certainly; I described the object of that yesterday.

Q. Did Captain Jervis ever know or hear of a British Fleet bearing their stern upon the enemy, of equal or inferior force, that enemy standing towards them, and immediately after having been engaged with them?

A. I deny the fact in all its extent and meaning.

Q. I think Captain Jervis has said, that while the English Fleet was standing to the southward, the French Fleet could have fetched and attacked them in that case, was not our sterns towards them?

A. I have answered all those questions yesterday, I have explained that manœuvre to a question from the Admiral, and I shall not explain it further, unless the Court require it?

Q. In those answers Captain Jervis gave yesterday,

he mentioned the fleet edging down to four or five sail of crippled ships, to give them support, I think; were not three of those four ships of my division?

A. The word support is not in my answer, to cover.

Q. Was it to cover them, I will take Captain Jervis's words?

A. I did not at that time know what ships they were.

Q. Does Captain Jervis now know whether they were not three of my division?

A. I have heard of it, I have never seen it; I saw two of them join the center division; but I do not know what the other ship was; and I never knew the Egmont was one till this Court sat.

Q. I think Captain Jervis said yesterday (or to the purport) that the sail the Admiral carried during the afternoon, could not prevent the Vice Admiral of the Blue keeping up with him, and keeping his station; whether he supposes the distance he has stated the Formidable to be at, of three miles, or whether the distance, without supposition, if he knows whether the distance he has stated the Formidable was at three miles, he knows of his own knowledge, was occasioned by any neglect on board the Formidable to keep up with them?

A. I have not stated any such thing, Sir, neither the first part nor the latter; there is no distance specified in the afternoon, nor is the first part rightly stated.

Q. If I recollect, the question was put, whether he thought the sail the Admiral carried, was such, as to prevent the Vice Admiral of the Blue keeping in his station?

A. The question is stated correctly, I believe, Sir, but not my answer; my answers are not shaped to questions.

Q. Then I would ask Captain Jervis, if he knew the particular condition of the Formidable at that time?

A. I never pretended to any such knowledge.

Q. I would ask Captain Jervis, when the Red division quitted the station of the Vice of the Blue?

A. The Red division was never in it, Sir; I mean in the afternoon; I mean to confine myself.

Q. I mean in the afternoon?

A. I understand you perfectly.

Q. Was not they nearly so?

A. No; by no manner of means.

Q. Whereabouts was you during the afternoon, a-head or a-stern of the Admiral?

A. A-stern of the Victory, Sir, in my station, which I never quitted for a moment.

Q. Did not the Red division form a-stern of the Admiral; and if Captain Jervis understood it was by a particular order?

A. I understand you perfectly; I know nothing of any orders; I did not then.

Q. Did not part of the Red division form a-stern of the Admiral?

A. Part of the Red division did the greatest part, at a considerable distance a-stern of me.

Q. What time did they quit that station, Sir?

A. To the best of my recollection, I cannot speak positively to time, it was about five o'clock.

Q. Was not the Vice Admiral of the Blue, and the ships of his division, the last that came out of action?

A. They certainly were; I believe they must have been from their situation.

Q. Has not Captain Jervis understood that they suffered more than either of the other divisions?

A. It did not appear to me at that time, that they had suffered more than many of the center division, not at that time; I have seen it stated in News-papers, and narratives in hand-bills, upon my word: I wish not to draw comparisons upon it, or value myself upon the conduct of the ships under my command; from an authentic account published, the Formidable certainly did appear to have suffered very much; but I conceive the ship I commanded suffered as much as any ship in the fleet in every sense, except in number of killed and wounded, which I am very happy, did not happen to be so great.

Q. Was not the Red division the first part of the fleet that came out of action, and consequently had been the longest out?

A. Yes; I believe it was.

Q. I would ask Captain Jervis if the sailing and fighting instructions he receives, are not signed by the Commander in Chief, or whether they are ever signed by the flag officers of the separate division; if he knows the practice of the service?

A. I never was of any division, but that of a Commander in Chief.

Court. This is new matter, not relative to cross questioning upon what the Prisoner has asked to; it is starting new matter, which you are not to do.

Q. Mr. Jervis, I think, has said, he did not see the signal for the line repeated by the Formidable; I would ask Captain Jervis, whether it was repeated or not? Was not its flying on board the Commander in Chief a sufficient warrant to every ship to take their stations, when they were able to do so?

A. I must beg the interposition of the Court upon this question; it is leading me to reflect upon the conduct of the Captains of the Vice Admiral of the Blue's division, for whom I have the highest esteem.

Court. You have no occasion to answer it, Captain Jervis; I don't see any other application it will bear.

Prosecutor. I will tell Captain Jervis, no such application is meant by the question; but the following question would have been, whether they could take their stations while they were occupied by other ships?

Captain Jervis. I have already denied that fact.

Q. Captain Jervis has been asked if he saw the Vice Admiral of the Blue make a signal of distress; I should be glad to understand what signal of distress he supposes was applicable at that time?

A. Though I am not accountable for what I have been asked, I will repeat that I did not know the particular situation of the Formidable, and I never pretended to any such knowledge.

Court. I would ask Captain Jervis if the weather was such that a boat could pass from one ship to another without danger during the whole time?

A. The best proof is our long-boat was floating between the French Fleet and ours without any body to guide her; but it was certainly such weather that any boat might have lived.

Prosecutor. Captain Jervis says he kept close to the Victory the whole afternoon.

A. From three o'clock, the time the Admiral wore.

Q. Then of course your rates of going were the same?

A. Undoubtedly they must have been.

Q. I would ask Captain Jervis whether he was fired into by the Duke, or any other British ships during the engagement that day?

A. I never knew that the Duke had fired a shot

that day till several days after the action; and I don't believe any ship fired into the Foudroyant but the French.—I never heard of it upon the larboard side, nor did I ever conceive such a thing happened.

Court. In general Captain Jervis was asked about damages to the ship, did he mention the number of killed and wounded?

A. I did not speak of that positively; I believe the account given in was a just account.

Court. I remember you said very few were killed.

A. There were very few killed.

Prosecutor. Can Captain Jervis say how many?

A. I believe to the best of my remembrance five men killed, and one soon after died of his wounds, many more wounded; I never thought of putting the men down in the least.

Q. How many of those were wounded?

Court. Were any men wounded or blown up by an explosion on board the Foudroyant?

A. I did not know of any explosion till the action was over; the Lieutenant that commanded one of the decks told me a man had been killed by putting a cartridge into a gun, and the gun went off, a man and a boy were wounded; it was a story I could not well account for. I believe we sent two men and a boy to the hospital, both are recovered and now in the ship.

A Member of the Court. If I recollect right, I understood you said you spoke only to the charge, and would speak to every article of the charge; if I am wrong you will tell me.

A. I did not say I would speak to them only, but when they came across me I would speak to them. I have nothing to guide me in giving my evidence but the charge, it seems I am bound to speak to that. It seems so by the oath I have taken.

Q. I beg leave to ask you, in answer to the articles of the charge, to part of the fourth and fifth articles of the charge: Whether to your knowledge Admiral Keppel did any one act between the 23d and 29th of July, that was disgraceful to the British Flag?

A. I have already answered that question very fully in a reply I gave yesterday, I said I did not know of any one act in his conduct, during that time, disgraceful to the British Flag; and I am very ready to say it again.

Q. To part of the fifth charge, do you know of Admiral Keppel having lost an opportunity during the time before-mentioned, of doing an essential service to the State, and by losing that opportunity tarnishing the honour of the British Navy?

A. I know of no such instance.

Captain R. KINGSMILL of the Vigilant sworn.

Examined by the Admiral.

Q. Captain Kingsmill, I am charged with having advanced to the enemy, and made the signal for battle on the 27th of July without forming the line, what in your judgment would have been the consequence, if I had formed it, instead of closing with the enemy as I did?

A. That the French Fleet would not have brought to action on that day.

Q. I am charged with not having advanced to renew the battle after I had passed the rear of the enemy, and wore upon the larboard tack, to stand towards them again. Had I at any time a sufficient force collected together to renew the fight, or to prevent their forming a line upon the starboard tack?

A. No.

A. No:

Q. Was not the signal for the line kept flying all that time to collect them?

A. It was.

Q. I am charged with having wore against, and made sail directly from the enemy; was not my wearing at that time to stand to the southward a necessary movement for the protection of my disabled ships?

A. I think it was a very proper manœuvre both for the protection of the disabled ships, and to collect the ships together to renew the battle.

Q. Had it the least appearance of a flight?

A. No, certainly not.

Q. Do you recollect what sail I carried in the afternoon and during the night?

A. I don't recollect what sail the Victory had, but I recollect we were in our station a-head of the Victory at that time under our double-reefed top-sail, and very often with our mizen-top-sail a-back, to keep in our station.

Admiral Montagu. Were your top sails reefed?

A. Double reefed top-sails, and very often with our mizen-top-sail a-back; the fourth ship in the French Line was then to leeward of us upon the lee-beam.

Q. Did you see the French Fleet in the morning of the 28th?

A. I saw three sail of the French Fleet in the morning of the 28th going before the wind, going large with all their studding-sails set; they were seen by some of the officers before me, that was the time I saw them they went so.

Q. Did you see the signal out for any ships to chase them?

A. There was some pennants out, but I don't recollect what ships they were for; I remember one of my Lieutenants telling me, he believed our signal was out, but upon looking again we found it was not out.

Q. If I had chased with the Fleet towards Ushant in that state the ships were in after the action of the 27th, with the wind and weather as it was, was there the smallest probability of coming up with the French Fleet before they reached the port of Brest?

A. I don't think there was the smallest probability.

Q. Captain Kingsmill, you have heard all the articles of the charge read, therefore I desire you to state to the Court any instance, if you saw or know of any such, in which I negligently performed my duty on the 27th or 28th of July.

A. I can state to the Court no instance of negligence, nor do I know of any; but, Sir, you discharged your duty with the greatest ability, as became a brave and gallant officer.

Cross Examination by the Prosecutor.

Q. I will only trouble Capt. Kingsmill with one question: If he remembers stopping the firing on board the Vigilant, because of firing into one of our own ships?

A. No, I do not.

Sir CHARLES DOUGLAS, Captain of the Sterling Castle, sworn.

Q. I would ask Sir Charles Douglas, did the French Fleet shew any intention of coming to action from the 24th to the 27th of July, when they were brought to battle, or did they endeavour to avoid it?

A. By no means, to the best of my recollection, but they ever did endeavour to avoid it.

Q. Did I do my utmost endeavour as an officer to bring them to action during those days?

A. To the best of my knowledge and recollection with unremitting assiduity.

Q. Had you commanded a British Fleet in the same situation the French Fleet were in, with respect to the fleet under my command during the 24th, 25th, and 26th of July, would you have hesitated a moment to have led it down to battle upon account of the wind and weather upon any part of those days?

A. To the best of my judgment, had I had the honour of commanding a British Fleet under such circumstances, I could not have desired better opportunity than daily did offer, to have given battle to the French Fleet turning up towards me, and endeavouring (as the British Fleet actually did) to bring me into action.

Q. As I am charged with having advanced towards the enemy upon the 27th of July, and made the signal for battle without forming a line, what in your judgment would have been the consequence if I had formed it instead of closing with them as I did?

A. Judging of their conduct by the past, had the Admiral formed his fleet in a line of battle on the 27th in the morning, I do not think that he could have brought them to action at all; and even without having formed a line, had it not been for a shift of wind, I do not think we should have fetched near enough within cannon shot, that is to say, of any part of their fleet at all.

Q. How many ships had the Vice of the Red with him, advancing towards the enemy upon the larboard tack, after the action?

A. I really don't positively recollect how many.

Q. Was your ship one, Sir Charles?

A. I was one of the number that followed Sir Robert Harland towards the rear of the fleet in the Sterling Castle, which I then had the honour to command.

Q. I am charged with having hauled down the signal for battle, by which the Red division was prevented from renewing the fight upon the larboard tack; I desire you will acquaint the Court, what in your judgment would have been the consequence of my keeping abroad that signal, or by making any other I had ordered the Vice of the Red, with the ships with him, to attack the enemy at this time?

A. To the best of my judgment I do think that such measure would have been attended with disadvantageous consequences, such part of the Red division not having been of sufficient force to have attacked the whole of the French Fleet, and moreover not having been close up together.

Q. Did you see the French Fleet wear and form their line upon the starboard tack?

A. I do recollect to have seen a part of the French Fleet, I cannot say the whole or no, make sail a-head upon the starboard tack, and some of them form themselves into a line of battle a-head; but I cannot say exactly at what time this was, nor how many of them were formed at the time I allude to. I cannot fix it.

Q. I am charged with having wore to stand to the southward at this time, and leading the British Fleet directly from the enemy; did my wearing at this time appear to you to be a necessary manœuvre, or had it the appearance of a flight?

A. Your wearing to the southward did to me then appear to be a necessary measure, nor had it surely by any means the appearance of a flight, nor did it ever, in any the smallest degree, make impression upon me to that effect.

Q. What sail was you under during the night of the 27th?

A. Du-

A. During the night of the 27th, to the best of my recollection, in general under three top-sails and mizen-stay-sail, sometimes the fore-tack on board, the fore-sail very often hauled up, much to the fatigue of my ship's company, and for the ship's being foul I did not dare to use the common expedient of backing the mizen-top-sail for fear of driving me down to leeward and putting the Fleet into confusion: I don't recollect how often my fore-sail was up and down, it was so very often indeed.

Court. Was your top sail reefed?

A. Double-reefed; the main-top-mast having been shot through both above and below the cap, and the bowsprit shot through two turns into the inner gammoning: I did not dare to let a reef out to follow my Admiral so fast as I should have done, I thought it better to compromise with the weather to preserve my masts with double-reefed top-sails: I now allude retrospectively to my having followed Sir Robert Harland. I beg leave to observe with regard to the sail that I carried, to the best of my remembrance sometimes we did haul aft the main-top-mast-sail sheet, and I am not very sure, though I was very tender of my bowsprit, whether we did not also once or twice hoist up the fore-top-mast stay-sail; and now I have been sufficiently minute.

Q. Had the very bad sailing of your ship, as you have described, occasioned your falling so far astern of the Red division as to be next to the center division; had it occasioned you to fall entirely astern of the Red division?

A. Not that I recollect.

Q. Did you during the night of the 27th of July, and what time of night, order your men to quarters upon a ship ranging up with you, which you thought was a ship of the enemy's.

A. At or about the first dawning of the day having my leader the Berwick in my eye, and yet coveting to keep myself to windward, and being then actually rather upon her weather quarter, to the end that I might have it in my power to assume my station with more exactness and precision in the line of battle as day-light should advance, I observed a ship ranging up upon my weather-quarter, when first I saw them, I think about three points on my weather quarter; not knowing who it might be, I thought it prudent to order my ship's company to their quarters, and resume our preparation for battle, which had been for some time discontinued.

Q. What ship was it so ranged up to you?

A. As that ship approached towards our beam, I could plainly discern the flag at her fore-top-mast head, the colour whereof I could not get ascertained with certainty; she passing farther along and no act of hostility having passed between us, I presumed it to be the Formidable, although she had neither top nor poop-light, nor ensign flying.

Court. Any light at the bowsprit end?

A. No light at the bowsprit end; about this time I bore up a little as the day opened that I could do it with safety, into my more precise station in a line of battle, ahead of the Courageux, the ship in question passing along until she bore farther forward, when I observed her having then a blue ensign flying; and I have something to observe, which is, seeing this ship approach in the manner described, I do confess I was not without some apprehensions, that the enemy had, by stretching away upon the larboard tack, doubled upon our rear in order to regain the weather-gage, and having at or about the same time seen other ships in the same quarter of the compass, my suspicions grew the stronger in that respect, inasmuch that I did ruminate or entertain the idea of making the signal for seeing strange ships in the N. W. quarter, and actually had proceeded so far in my own mind as

to be pondering whether to make the day or the night signal, which nearly fixes the time of my being under that apprehension.

Q. Did you see the lights of the Admiral of your own division at that time?

A. I really do not recollect as to that circumstance.

Q. When the day came was you then sure it was the Vice Admiral of the Blue?

A. To the best of my knowledge and remembrance it could be no other.

Q. In the morning of the 28th, if I had chased towards Ushant in the condition the fleet was in, their masts and yards after the action of the 27th, was there any probability of coming up with the Fleet of France before they reached the port of Brest?

A. Had the French Fleet observed their former line of conduct, there could not have been the smallest probability of our coming up with their fleet before they reached their port of Brest; by their line of conduct I mean avoiding an engagement.

Q. You have heard all the articles of the charge read, Sir Charles, therefore I desire you will state to the Court any instance, if you saw or know of any such, in which I negligently performed my duty upon the 27th or 28th of July?

A. I did not observe any thing done or left undone by Admiral Keppel on the 27th and 28th of July bearing the appearance of his negligently doing his duty.

No Cross Examination.

PHILIP CROSBY, Captain of the Centaur, sworn.

Examined by the Admiral.

Q. I am charged with having advanced to the enemy and made the signal for battle on the morning of the 27th of July without having formed the line; what would have been the consequence if I had formed it instead of closing with them as I did?

A. We should have increased our distance from the enemy and could not have brought on the action.

Q. How many ships of the Vice Admiral of the Red's division had he with him advancing towards the enemy upon the larboard tack after the Admiral?

A. I believe six or seven, I don't know which.

Q. Was you one of those ships?

A. The Centaur, which I commanded, was one of those ships.

Q. I am charged with having hauled down the signal for battle by which the Red division was prevented from renewing the fight upon the larboard tack, I desire you will acquaint the Court what in your judgment would have been the consequence of my keeping abroad that signal, or by making any other, I had ordered the Vice Admiral of the Red with the ships of his division with him to have attacked the enemy at this time?

A. If the Red division had been ordered to attack I am sure the Admiral of the Red division would have done it; but in my opinion it would have been a dangerous experiment, for from the apparent situation of the fleet in general he could not have been supported.

Q. Did you see the French Fleet wear and begin to form a line upon the starboard tack?

A. I did.

Q. I am charged with having wore to stand to the southward at this time, and leading the British fleet directly from the enemy, did my wearing at this time appear to you to be a necessary manœuvre for the protection of my disabled ships, or had it the least appearance of a flight?

A. As

A. As to a necessary manœuvre, the Commander in Chief was the best judge of it; as to a flight, without wings, the idea could never strike me, from the apparent situation of the fleet.

Q. You have heard all the articles of the charge read, therefore I desire you will explain to the Court any instance, if you saw or know of any such, in which I negligently performed any part of my duty on the 27th or 28th of July.

Mr. President. If I am allowed, from the experience that thirty years service may have allowed me, to assume an opinion of the conduct of any Commander in Chief, and more particularly upon so great an officer as Admiral Keppel, I am of opinion, and do firmly believe, that he did do his utmost, in every respect, for the good of his Majesty's service.—It is the first time I have had the honour of being under his command, and it is one of the most unfortunate events in my servitude, that I have not been so before.

No Cross Examination.

JOHN KNOTT, Captain of the Exeter, sworn.

Examined by the Admiral.

Q. I am charged with having advanced to the enemy and making a signal for battle, without forming the line, upon the morning of the 27th of July; what, in your judgment, would have been the consequence, if I had formed it instead of closing with them as I did?

A. That we should not have got into action at all.

Q. How many ships had the Vice Admiral of Red with him advancing towards the enemy upon the larboard tack after the action?

A. I cannot say exactly to the number.

Q. As near as you can recollect.

A. Six or seven or thereabouts.

Q. Was your ship one of them?

A. Yes, Sir.

Q. I am charged with having hauled down the signal for battle, by which the Red division was prevented from renewing the fight upon the larboard tack; I desire you will acquaint the Court, what, in your judgment, would have been the consequence, if by keeping abroad that signal, or making any other, I had ordered the Vice Admiral of the Red, with the ships of his division that were with him, to have advanced and attacked the enemy at this time?

A. The destruction of the Red division.

Q. Did you see the French wear and begin to form a line on the starboard tack?

A. I did not see the French Fleet wear, I saw them after their wearing.

Q. I am charged with having wore and stood to the southward, and leading the British Fleet directly from the enemy; did my wearing appear to you to be a necessary manœuvre, or had it the least appearance of a flight?

A. It appeared a very necessary manœuvre; I have been thirty years in the service, and I never saw an Englishman turn his back to a Frenchman.

Q. You have heard all the articles of the charge read, therefore I desire you will state to the Court any instance, if you saw or knew of any such, in which I negligently performed any part of my duty upon the 27th or 28th of July.

A. I know of none.—I have had the honor of serving you before, Sir, and it was the greatest pride of my heart I was commissioned to serve under you again, knowing you to be a gallant seaman, and I thought you the first Admiral in the world, and your conduct during the whole time I saw the French Fleet convinced me my judgment was right in respect to your abilities.

No Cross Examination.

KEITH STEWART, Captain of the Berwick, sworn.

Examined by the Admiral.

Q. I am charged with having advanced to the enemy and having made the signal for battle without forming the line upon the morning of the 27th of July; what in your judgment would have been the consequence if I had formed it instead of closing with them as I did?

A. I do apprehend, Sir, that the French Fleet could not have been brought into action that day, if the line of battle had been formed.

Q. How many ships had the Vice Admiral of the Red with him advancing towards the enemy upon the larboard tack after the action?

A. I do not know, the Berwick was not there.

Q. Did you see the French Fleet wear and begin to form the line upon the starboard tack?

A. I cannot say I did.

Q. I am charged with having wore and stood to the southward and leading the British Fleet directly from the enemy; did my wearing to the starboard tack appear to you to be a necessary manœuvre, or had it the least appearance of a flight?

A. To the best of my judgment it was a necessary manœuvre; I never conceived it to be meant as a flight, upon the contrary I expected to have been in action with the Fleet before five in the afternoon.

Q. Did I make every necessary signal to collect the fleet into order upon the starboard tack in order to renew the battle?

A. Yes, Sir.

Q. Did you see the French fleet in the morning of the 28th?

A. No.

Q. If I had chased towards Ushant with the fleet in the state the ships were in from the action of the 27th, and with the wind and weather as it was, was there the smallest probability of coming up with the French Fleet before they reached the port of Brest?

A. I think certainly not.

Q. You have heard all the articles of the charge read, therefore I desire you will state to the Court any instance, if you saw or know of such, in which I negligently performed any part of my duty upon the 27th or 28th of July.

A. I know of none.

No Cross Examination.

The Court adjourned to Monday.

The Twenty-eighth Day, Monday, February 8.

Lieutenant THOMAS LUMLEY of the Robuste sworn.

Examined by the Admiral.

Q. Mr. Lumley, have you got your log-book, Sir?

A. Yes, Sir.

Q. Is your log-book an exact copy of the original Robuste's log-book?

A. Yes, Sir, with two or three additions of my own, which I put in then in a parenthesis.

Court. What time did you put them in?

A. At the time I wrote the log.

The Admiral. Then by comparing of Mr. Lumley's log-book, except his sentence in the parenthesis, with the log-book upon the table, it will determine the additions and alterations that have been made in it.

Court. How many days would you examine?

The Admiral. Only the 27th and 28th.

Judge Advocate. In what manner would you have the two books compared?

Z z

President.

President. Let the Clerk read one and you look at the other, or Mr. Lumley himself read it.

Mr. Lumley. Fresh breezes and squally, still in chace of the French Fleet to windward.

Judge Advocate. The French Fleet to windward, without the words still in chace.

Prosecutor. In which of the log-books is the word still wanting?

A. In the ship's log-book.

[Then the examination was made by Mr. Lumley and the Judge Advocate, in order to settle what was different before it was stated at large to the Court.]

Judge Advocate. Read Mr. Lumley's here.—At day-light on the 28th, saw three sail of the enemy very near.

Mr. Lumley. Those words are in as a remark of my own, but not in the original log-book.

Judge Advocate. I think the alterations now as they are distinguished are these—

At eleven (in the book on the table) body of the French Fleet south half west; at half past ten the headmost ships engaged with the French, who passed to windward of them upon the larboard tack.

In Mr. Lumley's book—the words are, South by west five or six miles.

At two, lower starboard gun-deck ports shot away.

In the book on the table, between six and seven could perceive on board the Admiral our's and several other ships signals to bear down into the line, which was repeated by the Formidable.

In Mr. Lumley's book—at six tacked and bore down and resumed our station in the line; then there is an account of the killed and wounded.

In the book upon the table—in the evening having stopped our shot holes and got into our station in the line, continued in it the whole night with as much exactness as a disabled ship could do, the Admiral making much sail.—Not in Mr. Lumley's.

In the book on the table—at day-light saw three sail of the enemy very near us, the Admiral made signal to chace to the south-east, which is not mentioned in Mr. Lumley's book.

In the book upon the table—the first signal on the morning of the 27th is, for us and several other ships of the Vice Admiral of the Blue squadron to give chace to windward.

In Mr. Lumley's book—a signal for the Vice Admiral of the Blue's squadron to give chace to windward.

The Admiral. When did you first come upon deck in the morning of the 28th.

Mr. Lumley. At three o'clock in the morning.

Q. Was it your watch upon deck?

A. No, Sir, Mr. Pitt, the third Lieutenant, who had the middle watch, sent down at three o'clock he would be obliged to me if I would relieve him for the last hour of his watch, as he was very sleepy.

Q. Where was the Robuste when day-light appeared?

A. Upon the Vice Admiral of the Red's weather-gage within hail of him.

Q. What sail had the Robuste when you came upon deck?

A. Close reef'd top-sails courses, the fore and main top-mast and mizen stay-sails.

Q. Did you shorten sail, or continue upon that sail?

A. Soon after I came upon deck the First Lieutenant came up, and finding out that it was certainly a red flag at the fore-top-mast head of the ship to leeward, we hauled the main top-sail up

and backed the mizen top-sail and hauled the stay-sails down, I believe, I am not certain.

Q. Was the Vice Admiral of the Rear a-head of the center division at that time?

A. Yes, Sir, he was.

Cross Examination.

Prosecutor. Ask Mr. Lumley if he was present when those corrections took place in the log book that was mentioned?

A. No; I was once present when I saw some leaves taking out of the log-book, which made me believe there was an alteration to take place.

Admiral Montagu. Present with who, Sir? You say you was present when some leaves were taking out, with whom was you in company?

A. The master and some of the officers, I do not exactly know who it was, in the ward room.

President. The Captain was not present?

A. No.

Q. Can Mr. Lumley speak with any degree of precision when that was?

A. It was about the 6th of December.

Admiral Arbuthnot. Where was your ship then?

A. I am not sure whether she was come into the harbour then, she was either come in, or came in a few days after. I am not sure whether she was at Spithead or in Portsmouth harbour.

Prosecutor. Does Mr. Lumley know what became of that leaf or leaves that he saw misplaced?

A. No, I do not.

Q. Have you ever seen them since that time?

A. No.

Q. I think Mr. Lumley mentions he relieved the deck at three o'clock; did he find the main-sail set then?

A. When I came upon deck.

Q. Yes?

A. Yes.

Q. Did the officer you relieved tell you the occasion of his setting the main-sail?

A. Yes; he said, after consulting the Captain, he was obliged to do it to keep sufficiently a-head of the Vice Admiral of the Blue.

Q. Did he shew you the Admiral's lights, or any lights that he took to be the Admiral's?

A. No; the ship which he pointed out as the Vice Admiral of the Blue's ship, the Formidable, had no lights on board, to my knowledge; I saw none.

Q. That ship was a-stern of you, was not she, as you say you was to keep a-head of her?

A. Yes.

Q. What I asked you was with respect to the Admiral's lights—the Commander in Chief.

A. I did not take notice of the Admiral's ship at all.

Q. Had you day-light to haul up the main-sail?

Admiral Montagu. He says the First Lieutenant came upon deck, and ordered the main top-sail to be hauled up.

Prosecutor. Did you distinguish the Vice of the Red's lights before you distinguished the red flag at the top-mast head?

A. He had lights, but I did not take particular notice how many.

Q. I understood Mr. Lumley he did not know where the Commander in Chief was from the time of coming upon deck till day-light?

A. No, I did not.

Admiral Montagu. I have one question to ask. When it was day-light where did you see the Vice Admiral of the Blue, the Formidable, where did you see her?

A. I

A. I did not see her at all, as I stood upon the quarter-deck, the First Lieutenant went aft upon the poop to look for her.

Q. Then she was a-stern of you. As you did not see her, I suppose you cannot answer at all?

A. No.

Court. Leave your book on the table.

Mr. ROBERT ARNOLD, Master of the Robuste, sworn.

Examined by the Admiral.

Q. When were the alterations made in the Robuste's log-book.

A. On the 12th of December last the alterations.

Q. Do you recollect at what time of the day the last alterations were made?

A. Between eleven in the morning and two in the afternoon.

Q. By whose orders were they made?

A. By Captain Hood's.

Q. Do you know if Sir Hugh Palliser was at Portsmouth at that time?

A. No.

Q. Do you know where the Robuste was in the morning of the 28th of July at day-light?

A. Yes.

Q. Where was she?

A. She was on the starboard quarter of the Queen, at the distance of about two cables lengths.

Cross Examination.

Prosecutor. Did Captain Hood, when you made the alterations or corrections, desire that they might be such as that you could swear to the truth, in case you should be called for, or to that purpose?

A. At the time Captain Hood ordered these alterations to be made I received it as his orders, and I never presumed to oppose any scruples of mine to him. After receiving it, I remember upon returning from the cabin, Captain Hood did say, he only wished for the log-book to be as correct as possible, and at the same time turning to me and to the Lieutenant, he said, I suppose you can attest it? Those were his words, I think.

Prosecutor. What Lieutenant was that that was with you?

A. The First Lieutenant, Mr. Inglefield.

Admiral Arbuthnot. And can you attest? Do you know that the Admiral carried much sail? That the Commander carried much sail that night, do you know it, the night of the 27th?

A. I was not upon deck in the night of the 27th myself.

Prosecutor. When Captain Hood mentioned to you and the First Lieutenant, or asked you, if I understood you right, whether you could attest those corrections or not, what answer was made by you, or either of you, or both, or what passed upon retiring from the cabin?

A. I answered yes; meaning those parts that fell under my observation.

Prosecutor. Does the Admiral call any more witnesses on his part?

The ADMIRAL.

Mr. PRESIDENT,

My accuser, when he closed his evidence, was pleased to lay in a claim that Captain Hood should be allowed to be heard in his justification, if I attacked his log-book. I believe if the Court will refer to the minutes of the 7th day's proceedings, his justification, such as he thought proper to make, will be found already recorded; and I only desire that the evidence I have just produced may be ap-

plied to it; I shall mention nothing but what Captain Hood admitted. He there says, he corrected and revised his log-book in his own protection, not knowing, but that he should appear at your bar as a prisoner, instead of a witness. But I appeal to the sense of the Court, whether the alterations and additions be such as can support the belief, or even the possibility of the existence of such a motive, since not one of those I am going to mention, have the most distant reference or relation to any fact, which could involve him in guilt, though they are all of them direct articles of my accuser's charges against me.

How, Sir, for instance, could the insertion or omission of the signal in the morning of the 27th, for several ships of the Vice Admiral of the Blue's division to chase to windward, instead of the whole Blue Squadron, on which my accuser founds his first charge, possibly affect the character or conduct of Captain Hood? How much less could the three French ships being seen, or not seen very near us on the morning of the 28th? He surely never could be answerable for their escape! But these additions, although I must ever think on them with pain, when I reflect on the reference they have to my accusation, the time I have just proved them to have been made, and the intimacy of the person who made them with my accuser; yet, as they are certainly facts (containing, I trust, no guilt, but in the opinion, or rather in the wishes of my accuser) and as the log-book is not made a false record by these insertions, I lay no other stress upon them, than to shew that they could not be made for the purposes which Captain Hood has stated to the Court. But the one that remains behind, is of a very different complexion *indeed!*—It is the addition of a circumstance which constitutes a capital charge against me, and which, if it missed my life, could not fail to destroy what is much dearer than life, to every man who deserves to live. Sir, it is besides the addition of a circumstance, which, though Captain Hood has called it a fair and faithful representation, has been proved, by a cloud of witnesses, to be wholly unfounded in fact; and, what is worse than all, has been this moment proved by the position of the Robuste in the morning of the 28th, to be a circumstance in which Captain Hood could have no possible personal interest.

Had the Robuste fallen a-stern in the night, the addition, though not the less criminal, would at least have been reconcileable with his account of its being done in his own protection.

But when instead of her being struggling to keep her station as a disabled ship, from the Victory's making *much* sail, she has been proved to have run miles a-head of it during a short night. I am entitled to say, that such motives could not have produced the addition, I am sure I wish he could have formed one to protect it. I declare to you, Sir, it is a subject of sorrow to me, that an indisputably brave and useful officer, which I know and acknowledge him to be, and which on that day he approved himself to be; a man with whom I had lived in a familiar friendship, should have been led, by the designs of *others*, into such a snare, and I can assure the Court and the public, I have only searched to the bottom of it for the safety of the service.

I lament the alarms which Captain Hood stated in his justification; no man alive can, or ought to feel more sensibly than I do, for innocence under the apprehension of groundless impeachment. But I am not answerable for them; their authors were unknown to me, I neither promoted or approved of them; if ever I myself mentioned the Blue division, it was as a body, under the controul and direction of their own Vice Admiral, and not as individuals;

dividuals; I honour them all as brave men, and it was with astonishment, that no longer ago than Saturday, I heard a question put by my accuser, pointed directly to their crimination, and can assure the Court, that I was well pleased to see it so honourably and spiritedly repelled by the witness to whom it was addressed.

Prosecutor. This is a matter that tends to affect Captain Hood, I hope the Court will allow more witnesses to be called, to elucidate the matter more fully. I am informed of an instance, in a good many respects similar, where the credit of a witness was arraigned in the trial of Lord George Sackville, where it was permitted for evidences to be called to obviate reflections passed upon one of the witnesses.

President. My answer is, it does not appear from any thing the Admiral has said now, it has affected Mr. Hood at all; it appears to me to be spoke to his credit.

Prosecutor. It is supposed he has inserted false things in his log-book.

The Admiral. The Court are the best judges of that which appeared upon evidence.

Admiral Montagu. What Captain Hood has declared does not come before us. If Captain Hood has done a wrong thing and a bad thing, he must acquit himself to the world in the Morning Chronicle, or the General Advertiser, or some of the public papers; it does not come before this Court. There are ministerial and anti-ministerial papers, he will acquit himself in them, if he can.

Prosecutor. I must add, it attacks the credibility of Captain Hood, and charges him with asserting a falsehood.

Admiral Montagu. It is not a matter we can take cognizance of at all; if he has done wrong I am sorry for it.

Sir JOHN HAMILTON, Captain of the Hector, sworn,

Examined by the Admiral.

Q Sir John Hamilton, as I am charged with having advanced to the enemy, and made the signal for battle without having formed the line, I desire you would inform the Court what would have been the consequences if I had formed it, instead of closing with them as I did?

A. You never could have come to action.

Q How many ships of the Vice Admiral of the Red were with him advancing towards the enemy upon the larboard tack after the action?

A. Not more than five.

Q Was you one of those ships?

A. I was.

Q I am charged with having hauled down the signal for battle, by which the Red division was prevented from renewing the fight upon the larboard tack; I desire you will acquaint the Court, what, in your judgment, would have been the consequence, if by keeping abroad that signal, or by making any other, I had ordered the Vice Admiral of that division to have advanced with the ships with him to have attacked the enemy at that time?

A. The Vice Admiral, at that time, was in a very critical situation, advancing towards five sail of the enemy's line of battle ships, and he had no ships near to support him but the Hector, and in my opinion, if the signal had not been hauled down, he would have been liable to have been cut off.

Q I am charged with having wore to stand to the southward at this time, and leading the British Fleet directly from the enemy; did my wearing at this time appear to you to be a necessary manœuvre, or had it the least appearance of a flight?

A. A necessary manœuvre, and no appearance of a flight.

Q If I had chased towards Ushant in the morning of the 28th, in the state the fleet was in respect to masts, yards, and rigging, from the action of the 27th, and with the wind and weather as we then had, was there the smallest probability of coming up with the French Fleet before they reached the port of Brest?

A. Not the least probability.

Q You have heard all the articles of the charge read, therefore I desire you will state to the Court any instance, if you saw or know of any such, in which I negligently performed any part of my duty upon the 27th or 28th of July?

A. I know of none.

Cross Examination.

Prosecutor. Sir John Hamilton mentions there being only five sail with the Vice Admiral of the Red; at what time does he speak of?

A. At the time the signal for the action was hauled down.

Q How many were with the Vice Admiral of the Red at the time when you wore to join the Admiral again?

A. Not more than five sail; but what time does the wearing mean?

Q When they wore to stand to the southward again, to go down to the Admiral, when you left the French?

A. I cannot say what ships were with him then; most of the division, I believe.

Q Can Sir John Hamilton remember how many of the division went with the Vice Admiral of the Red when they formed a-stern of the Victory?

A. About six sail.

Q Can Sir John give an account where the rest was of that division at the time.

A. Some of them were to leeward, and others reefing after the action.

Q Does Sir John remember, while they were to windward, in the manner he has described, near five sail of the French ships, if he remembers seeing the Formidable lay with her head the same way as the French division was laying?

A. I do not recollect it.

Q While the Victory was on the larboard tack, standing towards the enemy, did you observe where the rest of the ships of that division were; whether they were about him, or separated from it, or where?

A. I was too much taken up with the attention to my own duty.

Q While the Admiral was with his head upon the larboard tack, did you observe any signal being made for ships to windward to bear down?

A. The signal to bear down was at four o'clock.

Q But I mean while the Admiral's head was towards the enemy?

A. I did. at four o'clock.

Q Does Sir John Hamilton understand the period I am speaking of; whether he recollects before the Admiral wore?

The Admiral. Sir Hugh wants to get out from the witness whether he saw the signal to bear down upon the larboard tack; I admit there was none.

Prosecutor. The same with regard to the Victory, whether there was any particular signal to make more sail at that time?

A. I did not observe it.

Q Or for ships to get into their stations?

The Admiral. There was no signal made while the Victory was upon the larboard tack but the signal for the line of battle.

Captain

Captain ISAAC PRESCOTT of the
Queen sworn.

Examined by the Admiral.

Q. I am charged with having advanced to the enemy, and made the signal for battle, on the 27th of July, without forming the line; what, in your judgment, would have been the consequence if I had formed it, instead of closing with the enemy as I did?

A. That you could not have brought the French fleet to action.

Q. How many ships had the Vice Admiral of the Red with him advancing towards the enemy, upon the larboard tack, after the action?

A. Seven, I believe.

Q. I am charged with having hauled down the signal for battle, by which the Red division was prevented from renewing the fight upon the larboard tack, I desire you will acquaint the Court what, in your judgment, would have been the consequences of my keeping abroad that signal, or, by making any other, I had ordered the Vice Admiral of the Red, with the ships with him, to attack the enemy at this time?

A. I am very certain the Vice Admiral of the Red would have punctually obeyed any signal he had received from you, but the consequences must have been fatal; the French, with a common professional knowledge or bravery, must have destroyed every ship of that division before you could have given them any support.

Q. Did you see the French fleet wear, and begin to form their line upon the starboard tack?

A. I saw many of their ships before the wind, and I afterwards saw them in a line.

Q. I am charged with having wore to stand to the southward at this time, leading the British fleet directly from the enemy; did my wearing at this time appear to you to be a necessary manœuvre, or had it the least appearance of a flight?

A. It did appear to me to be a most necessary manœuvre; and I cannot say it, in any instance, ever struck me with the appearance of a flight.

Q. Did I make every necessary signal to collect and form the fleet into order upon the starboard tack to renew the battle?

A. You did.

Q. Did you observe any signal or movement on board the Victory during the afternoon, that conveyed to you an idea that the Admiral did not intend to renew the battle that day, if he could have formed his line?

A. Not at all; I rather thought the Admiral meant to renew the battle, if he could have formed his line.

Q. Did the Queen carry distinguishing lights in the night of the 27th, and did you see the Victory's at the bowsprit end?

A. The Queen did carry her distinguishing lights the whole night; I did not, in my own person, see the distinguishing lights of the Victory at the bowsprit end, though I heard from my own officers they had seen it.

Q. Did you see any lights on board the Formidable that night, Sir?

A. I did not.

Q. Did you see the French fleet on the morning of the 28th?

A. I did not.

Q. Did you see three sail?

A. I did.

Q. At what distance were they?

A. Two of them were very near hull down, and the other half hull down.

Q. If I had chased towards Ushant, in the state the fleet was in after the action of the 27th, with

the wind and weather as it was, was there any the smallest probability of coming up with the French fleet before they reached the port of Brest?

A. I think not.

Q. How far was you from Ushant on the 28th of July?

A. About twenty-six leagues.

Q. You have heard all the articles of the charge read; therefore I desire you will state to the Court any instance, if you saw or know of any such, in which I negligently performed any part of my duty on the 27th or 28th of July?

A. I cannot point out to the Court any instance wherein you negligently performed your duty upon the 27th or 28th of July, for I know not of any. Receiving an early part of my naval education under your care, I rather look up to you with a filial respect.—Your character, Sir, stands too high to stoop to my judgment; but thus called upon, I declare I am happy to make the declaration upon oath, Your conduct on those days added lustre to your name, and held you up a great and worthy example to every officer of the British navy.

Cross Examination.

Prosecutor. Captain Prescott says, that if the Vice Admiral of the Red, with the ships of his division with him, had advanced to re-attack the enemy, it would have been attended with fatal consequences; I would ask Captain Prescott, that if the whole British fleet had advanced, and re-attacked, what fatal consequences were there to be apprehended?

A. I do not apprehend that the whole British fleet were in a state to advance to renew the attack.

Q. Were not the French advancing towards the British fleet?

A. Not that I observed.

Q. I mean after the time you mentioned to have seen some of them before the wind, and afterwards begin to draw into a line.

The Admiral. Captain Prescott never said so, he said he saw them in a line.

Captain Prescott. I said I saw many of them before the wind, and afterwards I saw them in a line.

Q. I mean after that time.

A. At the time they were in a line they were to leeward of us; I did apprehend the Admiral meant to renew the attack, but your ships were at that time so much to windward, I do not think that at that moment he had it in his power to have done it.

Mr. WARE, the Builder's Assistant of Plymouth Yard, sworn.

The Admiral. I only call for Mr. Ware to lay upon your table the state of the fleet, such as it was, as it came to the Master of the Yard.

Mr. Ware produced the papers; they were not read in Court.

Admiral Montagu. They are the exact damages.

A. They are what I received myself on board the ships, and these others I had from the Builder's office; I was on board Admiral Keppel's division, and the Red division; Mr. Pollard was on board the Vice Admiral of the Blue's division.

The Admiral. I beg the indulgence of the Court to have three or four letters read, and two or three answers to letters I shall produce, they will not take up long time.

The following Letters were then read by the Judge Advocate, who was called upon to prove the hand-writing of Philip Stephens, Esq; in one or two letters, which he did.

A a a

Victory

Victory, at Sea, 21st July 1778.
Ushant, N. 21°, E. 24 leagues.

SIR,

I enclose you the only information I have had of any ship since I left the Eddystone.

I made Ushant, and was well in with it on the 19th; that afternoon the Milford and Fox chased a French frigate, but I called them off when tolerably near, that I might have the whole fleet collected before dark; in the evening the Terrible joined.

I meant to stand in towards Brest the following morning, and early on the 20th the fleet was closing in with Ushant for that purpose, and stood on till ten o'clock, when the wind at N. B. W. increased to a strong gale, and made it prudent to carry the fleet into the sea, clear of the Saints; during the bad weather I discovered some of the ships crippled in their masts; but the worst accident has happened to the Victory, whose main-yard broke in the gale. I have no other remedy but taking the main-yard of one of the seventy-four gun ships, which I shall do the moment the weather permits, and send that ship to Plymouth for another. I send this by the Rattle-snake Cutter.

I am, Sir,

your most obedient, humble servant,

A. KEPPEL.

Philip Stephens, Esq.

(A COPY.)

Victory, at Sea, the 23d July 1778.

SIR,

It is not in my power to write you any thing perfect for the information of their Lordships, and yet it seems to me too important a moment to lose any time in letting you know, that I had with some pains and difficulty got the fleet into the latitude of Brest; a very great sea, and foggy weather, made me judge it expedient, at eight o'clock this morning, to bring to; the fog prevented my seeing the whole fleet till noon, when I perceived the fleet of France within four or five miles, as near me as the furthest of my own fleet, the wind then at north; I immediately made the signal for the Fleet to form east and west, and wore, laying the Victory's head with the main-top-sail to the mast, towards my own fleet in the south-west quarters, and hoisted my flag and colours; the French Fleet appeared to stand towards us, it became very foggy; but, at four o'clock the weather clearing, it was perceived the French was standing from the King's fleet to the N. E. I immediately made the signal for the fleet to wear, still keeping the signal for the line of battle abroad, only changing it for the ships to bear N. E. and S. W. of each other, and yet much sail, though, I fear, without possible hopes of coming up with the French ships this afternoon, unless they are as desirous of closing as I am; thirty-six sail, and more, have been counted, but I am not yet able to determine the number of line of battle ships; the French and English Fleets are now steering N. E. Ushant, bearing by reckoning N. 86. E. distance 66 miles; I fear the object of the French is to get in with their own coast: I send the Peggy Cutter in with this letter.

I am, Sir,

your most obedient, humble servant,

A. KEPPEL.

Philip Stephens, Esq;

(A COPY.)

P. S. Notwithstanding what I wrote in my dispatches of the 21st, the Thunderer is still in the fleet.

The Frigates I have sent a head to keep between the King's Fleet and that of France.

Victory, at Sea, July 30, 1778.

SIR,

My letters of the 23d and 24th instant, by the Peggy and Union Cutters, acquainted you, for their Lordships information, that I was in pursuit, with the King's fleet under my command, of a numerous fleet of French ships of war.

From that time, till the 27th, the winds constantly in the S. W. and N. W. quarters, sometimes blowing strong, and the French Fleet always to windward going off, I made use of every method to close in with them that was possible, keeping the King's ships at the same time collected, as much as the nature of a pursuit would admit of, and which became necessary from the cautious manner the French proceeded in, and the disinclination that appeared in them to allow of my bringing the King's ships close up to a regular engagement: this left but little other chance of getting in with them, than by seizing the opportunity that offered, the morning of the 27th, by the wind's admitting of the van of the King's fleet under my command leading up with and closing with their center and rear.

The French began firing upon the headmost of Vice Admiral Sir Robert Harland's division, and the ships with him, as they led up; which cannonade the leading ships and the Vice Admiral soon returned, as did every ship as they could close up: the chase had occasioned their being extended, nevertheless they were all soon in battle.

The fleets, being upon different tacks, passed each other very close: the object of the French seemed to be the disabling of the King's ships in their mast and sails, in which they so far succeeded as to prevent many of the ships of my fleet being able to follow me when I wore to stand after the French Fleet; this obliged me to wear again to join those ships, and thereby allowed of the French forming their fleet again, and range it in a line to leeward of the King's fleet towards the close of the day; which I did not discourage, but allowed of their doing it without firing upon them, thinking they meant handsomely to try their force with us the next morning; but they had been so beaten in the day, that they took the advantage of the night to go off.

The wind and weather being such as they could reach their own shores before there was any chance of the King's fleet getting up with them, in the state the ships were in, in their masts, yards, and sails, left me no choice of what was proper and advisable to do.

The spirited conduct of Vice Admiral Sir Robert Harland, Vice Admiral Sir Hugh Palliser, and the Captains of the fleet, supported by their officers and men, deserves much commendation.

A journal of my proceedings with the fleet since I left the English land, accompanies this, with an abstract of the ships damages, and a list of the killed and wounded.

I shall omit nothing that lays with me, to get the ships as soon as possible in condition to proceed on further service.

I send Captain Faulknor, Captain of the Victory, with this account to their Lordships, and am, Sir,

Your most obedient,

and very humble servant,

A. KEPPEL.

Philip Stephens, Esq;

Secretary to the Admiralty.

List of men killed and wounded, in the action with the French Fleet, the 27th of July 1778.

Ships Names.	Killed.	Wounded.
Monarch	2	9
Exeter	4	6
		Ships

Ships Names.	Killed.	Wounded.
Queen	1	2
Shrewsbury	3	6
Berwick	10	11
Sterling Castle	2	11
Courageux	6	13
Thunderer	2	5
Vigilant	2	3
Sandwich	2	20
Valiant	6	26
Victory	11	24
Foudroyant	5	18
Prince George	5	15
Vengeance	4	18
Worcester	3	5
Elizabeth	—	7
Defiance	8	17
Robuste	5	17
Formidable	16	49
Ocean	2	18
America	1	17
Terrible	9	21
Egmont	12	19
Ramilies	12	16
Total	133	373

Officers wounded.

Lieutenant Nicholas Clifford, 2d of the Formidable.

Lieutenant William Samwell, 3d of the Shrewsbury.

Lieutenant John M'Donald, of the Marines—Prince George.

Surgeon of the Elizabeth.

A. KEPPEL.

Victory, at Sea, 30th July 1778.

SIR,

Upon examining the damages sustained by the different ships in the action with the French Fleet, I find it absolutely necessary the getting them to an anchor, and into port, to enable them to put themselves properly in condition; I am therefore proceeding with the fleet to Plymouth Sound, and shall anchor them there, and in Cawland Bay.

I have judged it expedient for the safety of the trade expected home, and in hopes of meeting with the East and West India Convoys, to dispatch the Valiant, Bienfaisant, and two Frigates, to cruize from 49 50, to 47 50 N. about thirty leagues to the westward of Scilly, with orders, in case of falling in with any one of the Convoys, for one of the two-deck ships to see them in safety as far as Plymouth; they are to remain fourteen days on this service, and then to repair to Plymouth Sound.

I am, Sir,

your most obedient,
and very humble servant.

A. KEPPEL.

Philip Stephens, Esq;
(A COPY.)

Admiralty Office, 2d August 1778.

SIR,

I received yesterday by Captain Faulknor, and immediately communicated to my Lords Commissioners of the Admiralty, your letters of the 30th ultimo, giving an account of your proceedings in the pursuit of the French Fleet, from the 24th to the 27th, and of your engagement with it on that day; the Earl of Sandwich lost no time in laying your said letters before the King; and I have it in command from my Lords to acquaint you, that his Majesty was thereupon graciously pleased to express the fullest approbation of your conduct, and satisfaction in the account you have

given of the spirited behaviour of the Vice Admirals, Sir Robert Harland and Sir Hugh Palliser, and of the Captains, officers, and men of the Fleet.

Their Lordships command me to send you their congratulations upon the victory you have obtained, in addition to which, I beg leave to offer mine, and have the honour to be,

Sir,

your most obedient humble servant,

PHILIP STEPHENS.

Hon. Admiral KEPPEL,
Plymouth.

Victory, Cawland Bay,

14th August 1778, Half past eight, A. M.

SIR,

Deeming the purport of the enclosed letter from Captain Leveson Gower of the Valiant, giving an account of his having fallen in with the homeward-bound Leeward Island Convoy, will give their Lordships the highest satisfaction; I have thought it right to dispatch it away by express.

I received it this morning by the Arethusa; the Convoy is, I conclude, by this time, passed this place; the Valiant, I expect, will be anchored in a few hours. I cannot help observing to their Lordships the propriety with which Captain Leveson has conducted himself upon this occasion; the Milford and Fox, that I sent off Portland a few days ago, will be in the way of the Convoy passing that Headland.

I am, Sir,

your most obedient

and very humble servant,

A. KEPPEL.

Philip Stephens, Esq;
(A COPY.)

Admiralty Office, August 17, 1778.

SIR,

I have received and communicated to the Lords Commissioners of the Admiralty your letters of the 13th and 14th instant, the latter inclosing one from Captain Gower, of the Valiant, giving an account of his proceedings with respect to the protection given to the West India fleet, and in return I have it in command from their Lordships to acquaint you that they very much approve of his conduct, and desire you will please to signify the same to him. I have the honour to be with great regard,

Sir, your most obedient humble servant,

PH. STEPHENS.

Hon. Admiral Keppel, at

Plymouth, by express.

(A COPY.)

The Admiral. The Court will see by those letters I have neither concealed nor put false glosses upon any part of my own conduct.

The Admiral then said,

Mr. President. I have now closed my evidence, and shall make no observations upon it; I submit the whole to the wisdom and justice of the Court.

Prosecutor. Mr. President, there being no other witnesses to examine, it is my intention to address the Court with some observations, as well upon the evidence as upon the Admiral's defence; for which purpose I beg to be indulged by the Court with a short time finally to prepare myself. If the trial had not run into so extraordinary a length, I should not wish for longer time than till to-morrow, but for such a mass of evidence to be observed upon, I hope the Court will not think it unreasonable to indulge me to Wednesday, more especially as the Admiral has thought fit to defend himself by criminating me.

The

The Admiral. I am entirely in the judgment of the Court with respect to my accuser's right to reply, I believe it is unprecedented in naval Courts Martial, even in the case of Admiral Byng, where I was (unluckily for myself, at least I reckon it unlucky where such a sentence was passed) a member of that Court Martial, the prosecution was carried on in the name of the Crown by the Secretary of State, no such attempt was made, and I am at a loss to conceive upon what it is Sir Hugh Palliser founds such an unprecedented claim.

The Court withdrew upon the question.

When the Court were returned, the Judge Advocate read the following resolution :

The Court having declared in a former resolution they came to in the course of this trial, when the Prosecutor said he had gone through all his witnesses he should produce in support of the charge, that his paper then offered by the Prosecutor could not be admitted ; and the Court continuing of the same opinion, have agreed, and now it is declared the evidence upon the part of the Prosecutor in support of the charge, and of the defence, is closed, that nothing more by way of address can be received.

The Court then adjourned to Ten o'clock the next morning.

The Court met on Tuesday the 29th day of proceeding at ten o'clock, with all the parties attending, and immediately adjourned to the next morning at ten.

The Court met again on Wednesday the 30th day of proceeding at ten, and immediately adjourned to the next morning at eleven o'clock ; Sir Hugh Palliser did not attend *this or the next day.*

The Court met at eleven o'clock, being the 31st day of their proceedings, when the Judge Advocate was desired by the President to read the opinion of the Court Martial, which he did in the following words :

At a Court Martial assembled on board his Majesty's ship *Britannia*, in Portsmouth Harbour, the 7th of January 1779, and held by adjournment at the house of the Governor of his Majesty's Garrison at Portsmouth, every day afterwards (Sundays excepted) till the 11th of February 1779, inclusive.

P R E S E N T,

Sir Thomas Pye, Admiral of the White, President.
Matthew Buckle, Esq; Vice Admiral of the Red;
till the close of the sixth day, when he became unable any longer to continue his attendance on account of sickness.

John Montagu, Esq; Vice Admiral of the Red.
Mariot Arbuthnot, Esq; } Rear Admirals of the
Robert Roddam, Esq; } White.

Captains Mark Milbank,
Francis Samuel Drake,
Taylor Penny.
John Moutray.
William Bennet.
Adam Duncan.
Philip Boteler.
James Cranston.

The Court, pursuant to an order of the Lords Commissioners of the Admiralty, dated the 31st of December 1778, and directed to Sir Thomas Pye, proceeded to enquire into a charge exhibited by Vice Admiral Sir Hugh Palliser, against the Honourable Admiral Augustus Keppel, for misconduct and neglect of duty on the 27th and 28th of July 1778, in sundry instances, as mentioned in a paper which accompanied the said order ; and to try him for the same : And the Court having heard the evidence, and the Prisoner's defence, and maturely and seriously considered the whole, are of opinion that the charge is malicious and ill founded : It having appeared that the said Admiral, so far from having, by misconduct and neglect of duty, on the days therein alluded to, lost opportunity of rendering essential service to the State, and thereby tarnished the honour of the British Navy, behaved as became a judicious, brave, and experienced officer : The Court do therefore unanimously and honourably acquit the said Admiral Augustus Keppel of the several articles contained in the charge against him ; and he is hereby fully and honourably acquitted accordingly.

GEORGE JACKSON,
Judge Advocate.

Thomas Pye.
John Montagu.
Mariot Arbuthnot.
Robert Roddam.
Mark Milbank.
Francis Samuel Drake.
Taylor Penny.
John Moutray.
William Bennett.
Adam Duncan.
Philip Boteler.
James Cranston.

(A Copy.)
GEORGE JACKSON.

The Address of Sir Thomas Pye, President, on delivering the Admiral his sword.

Admiral Keppel, It is no small pleasure to me to receive the commands of the Court I have the honour to preside at, that in delivering you your sword, I am to congratulate you on its being restored to you with so much honour ; hoping ere long you will be called forth by your Sovereign to draw it once more in the defence of your country.

The whole of these proceedings have been faithfully copied from my short-hand Minutes, and have been since examined by me,

WILLIAM BLANCHARD, Short-hand Writer,
No. 4, Dean-Street, Fetter-Lane.



A P P E N D I X.

SIR, Admiralty-Office, 9 Dec. 1778.
SIR Hugh Palliser, Vice-Admiral of the Blue Squadron of his Majesty's fleet, having in his letter of this day's date transmitted to my Lords Commissioners of the Admiralty, a charge of misconduct and neglect of duty against you, on the 27th and 28th of July 1778, in divers instances therein mentioned, and desired that a Court Martial may be held for the trying you for the same; and their Lordships intending that a Court Martial shall be held for that purpose, I have it in command from them to send you herewith a copy of the said charge, that you may be preparing for your defence.

I have the honour to be, Sir,

Your most obedient, humble servant,

P. H. STEPHENS.

Honble. Augustus Keppel,
 Admiral of the Blue, &c.

SIR, Audley-square, Dec. 10, 1778.
 I have received your letter of yesterday's date, informing me, "That Sir Hugh Palliser, Vice-Admiral of the Blue Squadron of his Majesty's fleet, had, in his letter of that day's date, transmitted to the Lords Commissioners of the Admiralty a charge of misconduct and neglect of duty against me, on the 27th and 28th of July 1778, in divers instances therein mentioned, and desired that a Court Martial may be held for trying me for the same, and that their Lordships intended that a Court Martial should be held for that purpose; also enclosing, by command of their Lordships, a copy of the said charge, that I may be preparing for my defence." I must beg of you to inform their Lordships, that to so very extraordinary a proceeding I can for the present only say, that I must take some time for consideration before I can return any other answer, than that I have received your letter.

I am, Sir, your humble servant,

A. K.

Ph. Stephens, Esq.

SIR, Audley-square, Thursday night, Dec. 10, 1778.
 The very extraordinary contents of your letter of last night made it impossible for me on a sudden to make any other answer, than a bare acknowledgment of having received it; but it has not required much time to determine me, in justice to my own reputation, to inform you, that I am willing to meet a Court Martial whenever the Board of Admiralty shall think proper to order me.

At the same time, Sir, I desire you will represent to the Lords Commissioners my utter astonishment at the countenance their Lordships have so far given to this proceeding, as to resolve on the same day on which such a charge is exhibited, to order a Court Martial against the Commander in Chief of the fleet, on an attack from an inferior officer, under all the very peculiar circumstances in which Sir Hugh Palliser now stands.

I am, Sir, your humble servant,

A. K.

Ph. Stephens, Esq.

SIR, Audley-square, 11th Dec. 1778.
 Your letter of the 9th, giving me notice to prepare for my defence at a Court Martial, makes it necessary for me to desire of their Lordships, that Captain Jervis of his Majesty's ship Foudroyant, Captain Marshall of his Majesty's ship Arethusa, and Sir William Burnaby, Captain of his Majesty's ship Milford, may not be ordered to sea before the Court Martial is held.

I may have occasion to call many officers and persons belonging to other ships not ordered to sea; the evidence of the Captain and First Lieutenant of his Majesty's ship the Fox I should be glad to have, but as the time of the return of those gentlemen to England is uncertain, I will not, on that account, protract the assembling of the Court Martial.

I am, Sir, your humble servant,

A. K.

Ph. Stephens, Esq.

Letter from Ph. Stephens, Esq.

SIR, Admiralty-Office, 11th Dec. 1778.
 I received yesterday afternoon your letter of the 10th instant, acknowledging the receipt of mine of the 9th, transmitting a copy of the charge exhibited against you by Vice-Admiral Sir Hugh Palliser, and this morning I received your letter, dated last night, intimating that you are willing to meet a Court Martial whenever the Board of Admiralty shall think proper to order one; and having without loss of time laid the same before my Lords Commissioners of the Admiralty, I am commanded by their Lordships to acquaint you, that they propose to order a Court Martial to be assembled on Thursday the 7th of January next, if you think you shall be ready with your evidence by that time; but if not, their Lordships will order it to be held on a later day.

As to the astonishment you express at the countenance you conceive their Lordships have given to this proceeding by resolving, on the same day on which the charge was exhibited, to order a Court Martial, their Lordships command me to acquaint you, that they know of no instance in which the Board of Admiralty, upon receiving a specific charge of such a nature, signed by an officer of rank serving under the party accused, and accompanied with a request for the assembling a Court Martial thereupon, have delayed coming to a resolution to order one, nor would they have thought themselves justified, if they had hesitated to take the necessary steps for bringing the matter to an early and legal decision.

I have the honour to be, Sir,

Your most obedient, humble servant,

P. H. STEPHENS.

Honble. Admiral Keppel, Town.

Letter from Ph. Stephens, Esq.

SIR, Admiralty-Office, 12th Dec. 1778.
 Having laid before my Lords Commissioners of the Admiralty your letter of yesterday's date, desiring that Captain Jervis of the Foudroyant, Captain Marshall of the Arethusa, and Sir William Burnaby,
 [A]

Burnaby, Captain of the Milford, may not be ordered to sea till a Court Martial has been held for your intended trial; and representing that you may have occasion to call many officers and persons belonging to other ships not ordered to sea, and that you should be glad to have the evidence of the Captain and First Lieutenant of his Majesty's late ship the Fox; but that as the return of those gentlemen to England is very uncertain, you will not on that account protract the assembling of the Court Martial, I am in return commanded by their Lordships to acquaint you, that in order to comply with your request respecting the Captains Jarvis, Marshall, and Sir William Burnaby, they will appoint other officers to command their ships till the trial is over; that if you will transmit to their Lordships a list of such other officers and persons as you may have occasion to call upon, they will in like manner appoint others to supply their places, that you may not be deprived of their evidence, nor the public of the use of the ships to which they belong; and with respect to the Captain and First Lieutenant of the Fox, I am to acquaint you, that their Lordships will take every method in their power to have them exchanged, or to obtain permission for them to come to England upon their parole as soon as possible.

I have the honour to be, Sir,
Your most obedient, humble servant,
PH. STEPHENS.

Honble. Admiral Keppel, Town.

SIR, Audley-square, Dec. 12th, 1778.
In answer to so much of your letter of yesterday, informing me that the Lords Commissioners of the Admiralty propose to order a Court Martial to be assembled on Thursday the 7th of January next, if I am ready with my evidence by that time, you will please to inform their Lordships I shall be perfectly ready to meet the Court Martial at the time fixed, provided the evidences mentioned in the list that accompany this can be assembled, others that occur to me I shall transmit you the names of from time to time; but I must beg leave to observe, and which you would please to communicate to their Lordships, that the evidence of the Captain and First Lieutenant of his Majesty's late ship the Fox will be so material to me, I hope and desire that effectual means may be taken to get those gentlemen to England in time.

I am, Sir,
Your humble servant,
A. K.

Ph. Stephens, Esq.

Letter from Ph. Stephens, Esq.

SIR, Admiralty Office, Dec. 14, 1778.
Having laid before my Lords Commissioners of the Admiralty your letter of the 12th instant, inclosing a list of evidence whom you desire to attend the Court Martial which is proposed to be held for your trial on the 7th of January next, as also your two letters of this day's date, desiring that all the Lieutenants and Warrant Officers (except the Boatswain, Gunner, and Carpenter) who were on board his Majesty's ship Foudroyant the 27th of July last, may be kept at home as necessary evidences at the said Court Martial; I am commanded by their Lordships to acquaint you that the necessary directions will be given, that the evidences above-mentioned may be forth coming.

I have the honour to be, Sir,
Your most obedient, humble servant,
PH. STEPHENS.
Honble. Augustus Keppel,
Admiral of the Blue, &c. Town

SIR, Audley-square, 16th Dec. 1778.
My Counsel having informed me that before they can give me the best advice in their power upon the charge of Sir Hugh Palliser, it will be necessary for them to see the whole of my instructions and correspondence with you; and that it may be necessary to produce the whole or part of them before the Court Martial, I desire you will acquaint the Lords Commissioners of the Admiralty therewith.

I am, Sir,
Your humble servant,
Ph. Stephens, Esq. A. K.

SIR, London, Dec. 17, 1778.
I inclose you a letter I received this day from Capt. Rowley, and in compliance with his request I have only to beg you to acquaint their Lordships, that I am not in the least desirous to give interruptions to the objects of the State, but to hope the Court Martial may be brought forward without interruption to the public service on my part. Captain Rowley has therefore my consent to proceed upon the service he was appointed to.

I am, Sir,
Your most humble servant,
Ph. Stephens, Esq. A. K.

The following is a COPY of the inclosed Letter:

Dear Sir, Wimering, near Portsmouth,
16th Dec. 1778.

By a letter I received from Lord Mulgrave, dated the 19th, he informs me you have desired I may be detained, as you want me as an evidence. The Monarch was at a very great distance from the center or the rear, she being one of the first ships that begun the action; and being employed with giving orders concerning the ship I commanded, I therefore cannot know much of signals, &c. If you can dispense with my evidence, it will be doing me a singular mark of your friendship, having got the command of the squadron, and every thing fixed to go to the West Indies; but if you think I can after this be of any service, I beg you will make use of me, who is,

Dear Sir,
Your much obliged and obedient servant,
JOSH. ROWLEY.

Mr. Stephens's letter in answer to mine of the 16th.

SIR, Admiralty-Office, 18th Dec. 1778.
I received and lost no time in laying before my Lords Commissioners of the Admiralty your letter of the 16th instant, respecting the communication of your instructions, and correspondence with me to your counsel, and perhaps to the Court Martial that is to be assembled for your trial. I was in hopes I should have been enabled by this time to have sent you their Lordships answer thereto; but as the instructions to which you allude are of a very secret nature, and were given in pursuance of his Majesty's commands, signified by one of his principal Secretaries of State, it is necessary that their Lordships should receive his Majesty's farther commands, before they can with propriety give you a full answer to your letter. Their Lordships are persuaded in the mean time you will not communicate those instructions to any person whatsoever, and they command me to assure you, that you shall have their farther answer with as little delay as possible.

I am, Sir,
Your most obedient, humble servant,
PH. STEPHENS.
Honble. Admiral Keppel, London.

Letter

Letter from Ph. Stephens, Esq. in further answer to mine of the 16th.

SIR, Admiralty-Office, 21st Dec. 1778.

My Lords Commissioners of the Admiralty having acquainted Lord Viscount Weymouth, his Majesty's principal Secretary of State, with your having been informed by your Counsel, that before they could give you the best advice in their power upon the charge of Sir Hugh Palliser, it would be necessary for them to see the whole of your instructions and correspondence with this office; and that it might be necessary to produce the whole or part of them at the Court Martial; and my Lords having at the same time desired his Lordship to signify his Majesty's commands with respect thereto, his Lordship has in return informed them that it is his Majesty's pleasure they should signify to you, that you must be sensible that there are parts of your instructions which cannot be divulged without great detriment to the State. I am commanded by their Lordships to signify the same to you accordingly, and to inform you in further answer to your letter of the 16th inst. that they cannot consent that the whole of your said instructions, and the correspondence above-mentioned, should be laid before your Counsel, or be produced at the Court Martial; but if you will point out any parts of the said instructions or correspondence which in your opinion have any relation to the operations of the fleet on the 27th and 28th of July last, you will be permitted to make use of them in the manner you desire, if there shall appear to be no objections of the nature above-mentioned.

I have the honour to be, with great regard,

Sir, your most obedient, humble servant,

PH. STEPHENS.

Honble. Augustus Keppel.

SIR, Audley-square, Dec. 23, 1778.

I have received your letter of the 21st instant, in which you inform me that the Lords Commissioners of the Admiralty had acquainted Lord Weymouth, one of his Majesty's principal Secretaries of State, with the contents of my letter to you of the 16th. That his Lordship has in return informed them, "That it is his Majesty's pleasure they should signify to me that I must be sensible there are parts of my instructions which cannot be divulged without great detriment to the State, and that the Lords Commissioners of the Admiralty had ordered you to inform me, that they cannot consent that the whole of my instructions and correspondence with you should be laid before my Counsel, or be produced at the Court Martial; but that if I will point out any parts of the said instructions or correspondence which in my opinion has any relation to the operation of the fleet on the 27th and 28th of July last, I shall be permitted to make use of them in the manner I desire, if there be no objection of the nature above-mentioned."—

I am also to acknowledge the receipt of your letter of the 18th, in which you informed me, "That it was necessary their Lordships should receive his Majesty's farther commands, before they could with propriety give me a full answer to my letter; and that their Lordships were persuaded that in the mean time I would not communicate those instructions to any person whatsoever." In answer to which, I must desire you will acquaint their Lordships, that I neither have made, nor will make any unnecessary communications of my instructions, nor are even my Counsel yet apprized of any part of them. But in answer of your letter of the 21st, I must beg of you to inform their Lordships that they have totally misunderstood my letter of the 16th, if they imagined

that, when put upon my trial for the defence of my life and honour, I could think of asking any permission to produce before the Court which is to try me, any circumstance which in my own opinion, or that of my Counsel, may in any degree be useful for my defence. No, Sir, my letter of the 16th was not to ask leave to do what by every rule of justice is my right. In respect to the last paragraph of your letter of the 24th, "That if I will point out any parts of such instructions or correspondence which in my opinion has any relation to the operations of the fleet on the 27th and 28th of July last, I shall be permitted to make use of them in the manner I desire, if there shall appear no objections of the nature above-mentioned," I can only say, that I conceive that my instructions, and every part of them, must necessarily have relation to the operation of the fleet on the 27th and 28th of July last, and on every day it was acting under my command, and that I was acting under those instructions. As to my pointing out the particular parts which I conceive may be most useful to me, and opening my defence to that Board of whole conduct towards me in this business I have reason to complain, where the accusations against me originated, and where my accuser has a seat, it cannot on reflection be expected, nor can I believe their Lordships intend, that when they put me on my trial they are to limit me by their discretion in the use of such means as I may think expedient for my defence, and that they propose to distress me by such an alternative as that I must necessarily (according to their statement) either bring detriment on the State, or prejudice to my own justification.

I am, Sir,

Your very humble servant,

A. K.

Ph. Stephens, Esq.

SIR, Audley square, 24th Dec. 1778.

The evidence of Captain Windsor and of the First Lieutenant of his Majesty's late ship the Fox, I consider so material at the Court Martial to be held for my trial on the 7th of next month, that I cannot help troubling you again on that head, and to beg to be informed whether such steps have been taken, as to insure their arrival in England in time.

At present it does not occur to me that I shall have occasion to call for the evidence of any of the officers of the Monarch, therefore do not wish any of them to be detained from the service they are going upon.

I am, Sir,

Your humble servant,

A. K.

Ph. Stephens, Esq.

Letter from Ph. Stephens, Esq. in answer to mine of this date, relative to Captain Windsor and his Lieutenant.

SIR, Admiralty-Office, 24th Dec. 1778.

Having received and read to my Lords Commissioners of the Admiralty your letter of this day, desiring to be acquainted with the steps which their Lordships have taken to insure the arrival of Capt. Windsor, and the First Lieutenant of the Fox, in time to give evidence on your trial on the 7th of next month; in return I am commanded by their Lordships to acquaint you, in addition to what is mentioned in the letter I had the honour to write you on the 12th instant concerning these witnesses, that their Lordships, on the same day, desired Lord Weymouth, one of his Majesty's principal Secretaries of State, to take such measures as should appear to him to be proper for the procuring their appearance at the time afore-mentioned; and I am

now

how further to inform you, it is not their Lordships intention that the Court shall sit until the effects of the afore mentioned application is known. Their Lordships observe what is mentioned in your aforementioned letter about excusing the attendance of the Officers of the Monarch.

I am, Sir,

Your most obedient, humble servant,

P H. S T E P H E N S.

Honble. Admiral Keppel.

S I R, Audley-square, Dec. 26, 1778.

I received yesterday your letter of the 24th, in answer to mine to you of the same day, informing me that in addition to what is mentioned in your letter of the 12th instant concerning the attendance of Captain Windsor, and the First Lieutenant of his Majesty's late ship Fox, at the Court Martial to be held for my trial on the 7th of next month, that their Lordships, on the same day, desired Lord Weymouth, one of his Majesty's principal Secretaries of State, to take such measures as should appear to him to be proper for procuring their appearance at the time afore-mentioned; and further to inform me it is not their Lordships intention that the Court shall sit until the effects of the afore-mentioned application is known.

This information leads me to apprehend a possibility of the enquiry being put off, and any delay, I much fear, will be productive of serious detriment to my country, in the detaining so many other officers from the public service.—From this consideration I remain of opinion, that the evidence of Captain Windsor and of his Lieutenant may be material at the trial, I must repeat what I wrote to you in my letter of the 11th instant, that from the uncertainty of the return of those gentlemen to England, it is my wish not to have the Court Martial put off on that account.

I am, Sir, your humble servant,

A. K.

Ph. Stephens, Esq.

Ph. Stephens, Esq. in answer to mine of the 23d.

S I R, Admiralty-Office, 27th Dec. 1778.

Having laid before my Lords Commissioners of the Admiralty your letter of the 23d instant, their Lordships, in answer to that part of it which relates to the accusation against you, command me to inform you that the accusation did not originate from their Board, but from Sir Hugh Palliser, whose attendance there has been dispensed with ever since.

Their Lordships having already communicated to you his Majesty's pleasure with regard to your secret instructions, cannot think it necessary to say any thing further to you upon that subject.

I have the honour to be, Sir,

Your most obedient, humble servant,

P H. S T E P H E N S.

Honble. Augustus Keppel,
Admiral of the Blue, &c.

S I R, Admiralty-Office, 27 Dec. 1778.

Vice-Admiral Sir Hugh Palliser having in his letter of yesterday's date acquainted my Lords Commissioners of the Admiralty, that as the witnesses will be assembled at your trial, he shall be ready, as soon as that trial is over, to vindicate his own conduct and behaviour on the 27th of July 1778; and he having therefore desired that their Lordships will be pleased to require you to give in your charge as soon as may be, if you have any to make against him, I am commanded by their Lordships to send you herewith a copy of the

said letter, and to signify their direction, that if you have any thing to charge against the conduct of Vice-Admiral Sir Hugh Palliser, you do transmit the same to their Lordships as soon as may be.

I have the honour to be, Sir,

Your most obedient, humble servant,

P H. S T E P H E N S.

Honble. Admiral Keppel.

S I R,

Admiralty, 26 Dec. 1778.

As the witnesses will be assembled at the trial of the Honourable Admiral Keppel, I beg leave to acquaint the Lords Commissioners of the Admiralty, that I shall be ready, so soon as that trial is over, to vindicate my own conduct and behaviour on the 27th of July 1778: I therefore desire their Lordships will be pleased to require Admiral Keppel to give in his charge as soon as may be, if he has any to make against me.

I am, Sir,

Your most obedient, humble servant,

H U G H P A L L I S E R.

Ph. Stephens, Esq.

S I R,

Audley-square, Sunday afternoon, 27th Dec. 1778.

I have to acknowledge the receipt of your letter of this day's date, inclosing a copy of a letter from Sir Hugh Palliser, acquainting the Lords Commissioners of the Admiralty, that as the witnesses will be assembled at my trial, he shall be ready, as soon as that trial is over, to vindicate his own conduct and behaviour on the 27th of July, and desiring that their Lordships would be pleased to require me to give in my charge as soon as may be, if I have any to make against him; in consequence of which, their Lordships are pleased to direct, that if I have any thing to charge against the conduct of Sir Hugh Palliser, I do transmit the same to their Lordships.

I desire you will express to the Lords Commissioners of the Admiralty my great surprize at the contents of these letters: I learn, by another letter you have favoured me with of the same date, that Sir Hugh Palliser's attendance at the Board has been dispensed with ever since he exhibited his charge against me. He appears to me, however, to think that he has lost no part of his weight and influence at the Board, when he presumes to desire their Lordships to require me, in my present situation, to employ a thought about him, in any other character than as the author of that charge; and, for the present at least, I must be excused in declining to give any other answer to your letter.

I am, Sir,

Your humble servant,

A. K.

Ph. Stephens, Esq.

Letter from Ph. Stephens, Esq. in answer to mine of the 26th about the Court Martial.

S I R, Admiralty-Office, 29 Dec. 1778.

I have laid before my Lords Commissioners of the Admiralty your letter of the 26th instant, expressing your apprehensions that the enquiry into your conduct may be put off, on account of the non-attendance of Captain Windsor and Lieutenant Bertie, of his Majesty's late ship the Fox, which you fear may be productive of serious detriment to your country, by detaining so many other officers from the public service, and therefore repeating what you had written in a former letter, that, from the uncertainty of the return of those gentleman to England, it is your wish not to have the Court Martial put off on that account, I am commanded

manded by their Lordships to acquaint you, that in consequence thereof, the Court Martial will be ordered to be held on the 7th of next month.

I am, Sir,

Your most obedient, humble servant,

PH. STEPHENS.

Honble. Admiral Keppel.

By the Commissioners for executing the Office of Lord High Admiral of Great-Britain and Ireland, &c.

Whereas, by our order of this day's date, we have directed Sir Thomas Pye, Admiral of the White, and Commander in Chief of his Majesty's ships and vessels at Portsmouth and Spithead, to assemble a Court Martial on Thursday the seventh day of next month, to enquire into what is set forth in the charge which has been exhibited against you by Vice-Admiral Sir Hugh Palliser, and to try you for the same, provided the witnesses on your part and his shall then be ready, or if not, as soon afterwards as they shall be so; and whereas we have therefore thought it fitting, that you shall be suspended from your employment as Commander in Chief of a Squadron of his Majesty's ships employed and to be employed in the Channel, Soundings, or wherever else his Majesty's service shall require; you are hereby suspended from your said employment accordingly. Given under our hands the 31st December 1778.

SANDWICH,
J. BULLER,
LISBURN.

To the Honble. Augustus Keppel,
Admiral of the Blue, &c.

By command of their Lordships,

PH. STEPHENS.

SIR, Admiralty-Office, Jan. 1, 1779.

My Lords Commissioners of the Admiralty having by their order of yesterday's date directed Vice-Admiral Sir Hugh Palliser to strike his flag and come on shore; I am commanded by their Lordships to acquaint you therewith, and have the honour to be, Sir,

Your most humble servant,

PH. STEPHENS.

Honble. Augustus Keppel,
Admiral of the Blue, &c.

SIR, Audley-square, 2d Jan. 1779.

I am unwilling to produce any inconvenience to the public service, by desiring the Earl of Sandwich to attend the whole of my trial, which will probably run into great length. At the same time, I conceive his Lordship may be a material witness for me when I come to my defence; I therefore desire you will give him notice that I desire his attendance at the said trial, and that he will produce, on that occasion, all and every such letter and letters as were written to him by Vice-Admiral Sir Hugh Palliser, from the 27th of July to the time of my sailing from Plymouth the 23d of August last, that such may be called for as I may judge material.—I send this notice before the commencement of the trial, that no objections may be taken on that account; but, as I intimated before, I don't wish that Lord Sandwich should be detained at Portsmouth any longer than is necessary, and therefore I shall give him timely notice before I shall want to call him.

I am, Sir,

Your very humble servant,

A. KEPPEL.

Philip Stephens, Esq.

SIR, Audley-square, 2d Jan. 1779.

The Provost Marshal, who was directed by their Lords Commissioners of the Admiralty to take me into his custody, informed me that, as their Lordships do not mean to give me unnecessary trouble, he was permitted to take my word of honour for my appearance at Portsmouth on the 7th of this month; I have given him my word of honour accordingly, and am this day setting out upon my journey thither, of which I desire you will inform their Lordships—

And likewise that you will acquaint them, I beg to be informed whether the Flag officers of the fleet who were commanding at the Nore, in the Downs, and at Plymouth, at the time their Lordships received the charge against me, have all of them been chosen by their Lordships to be at Portsmouth, in a situation to set at my trial.

I am, Sir,

Your very humble servant,

A. KEPPEL.

Ph. Stephens, Esq.

SIR, Portsmouth, 4th Jan. 1779.

I made an early application to the Lords Commissioners of the Admiralty, after being acquainted by Mr. Secretary Stephens, that their Lordships intended that a Court Martial should be held for trying me on a charge of misconduct and neglect of duty on the 27th and 28th of July last, exhibited against me by Vice-Admiral Sir Hugh Palliser, that the Captains of the King's ships serving in the fleet under my command, on the 27th of July, might be summoned, and likewise other officers: and since having notice given me, that the Court Martial is ordered to be assembled for my trial on Thursday the seventh instant, and that you are to act in your office as Judge Advocate at the said trial; I therefore think it proper to acquaint you, that I desire the witnesses whose names are inserted in this list that accompanies this, may be summoned to attend to give their evidence before the Court. Others that occur to me, that I may have occasion to call for, I will transmit to you their names in time, as I may judge their evidence material or necessary.—You will observe in the list of witnesses, the names of the Honourable Captain Windfor and Lieutenant Bertie, late of his Majesty's ship the Fox.—Mr. Secretary Stephens has acquainted me, in consequence of my application to the Lords Commissioners of the Admiralty, that they have desired Lord Weymouth, one of his Majesty's principal Secretaries of State, to take such measures as should appear to him to be proper for procuring their appearance at my trial.—Though the evidence of those gentlemen may be material, I have informed their Lordships, through Mr. Stephens, that should they not arrive by the day fixed for the assembling the Court Martial, I do not desire it may be put off on that account; however, I shall be glad to know from you, Sir, the result of the measures taken for their return to England, and if they are likely to be here by the 7th instant.—I beg likewise to be informed if there is any objection to the Captains sitting as members of the Court Martial to be held for my trial, who have been summoned as witnesses either by me or Sir Hugh Palliser.

I am, Sir,

Your very humble servant,

A. KEPPEL.

George Jackson, Esq.
Judge Advocate.

Ph. Stephens, Esq. about the attendance of the Earl of Sandwich.

S I R, Admiralty-Office, 4th Jan. 1779.

I this afternoon received, by the hands of Mr. Moore, your letter of the 2d instant, desiring me to give the Earl of Sandwich notice, that you desire his attendance at your trial; and that he will produce, on that occasion, all and every such letter and letters as were written to him by Vice-Admiral Sir Hugh Palliser from the 27th of July to the time of your sailing from Plymouth the 23d of August last, that such may be called for as you may judge material; and in return, I am to acquaint you, that I immediately communicated the same to his Lordship.

I am, Sir, your most obedient,

and most humble servant,

P. H. STEPHENS.

Honble. Augustus Keppel,
Admiral of the Blue.

Letter from Judge Advocate.

S I R, Portsmouth, 5th Jan. 1779.

I am to acknowledge the receipt of the letter you yesterday honoured me with, inclosing a copy of one you had written to the Secretary of the Admiralty, desiring that the Earl of Sandwich might have notice to attend at your trial; and take leave to acquaint you, in return, that I last night wrote to his Lordship, to apprise him of your intention, agreeable to the request made in your said letter. I am with regard and consideration, Sir,

Your most faithful,

and most obedient servant,

GEO. JACKSON.

Honble. Admiral Keppel, &c.

S I R, Portsmouth, 5th Jan. 1779.

I had the honour of your letter of yesterday, inclosing a list of the names of witnesses whom you desire may be summoned to give evidence upon your trial, and shall not fail to give the necessary notices accordingly.—I could not, upon the questions you are pleased to put to me respecting the return to England of Captain Windsor and Lieutenant Bertie, avoid referring myself to the Secretary of the Admiralty for information. I was set down to inform you I had taken that step, when luckily I received by a messenger a letter from him, in which he acquaints me that those gentlemen are arrived.

With regard to your other directions, whether witnesses may set as members of the Court Martial, not conceiving myself to be fully competent on that matter, I beg to reserve myself till I have seen and talked with the President, which I shall endeavour to do as early this morning as I possibly can. I am with great regard and consideration, Sir,

Your most faithful,

and most obedient servant.

GEO. JACKSON.

Honble. Admiral Keppel, &c.

Ph. Stephens, Esq. in answer to mine of the 2d.

S I R, Admiralty-Office, 4th Jan. 1779.

I have communicated to my Lords Commissioners of the Admiralty your letter of the 2d instant, acquainting them, that you have given your word of honour to the Provost Marshal to be at Portsmouth on the 7th instant, at the Court Martial to be held for your trial; you was about to set out for that place, and desiring to be informed, whether the Flag officers who were commanding at the Nore, in the Downs, and at Plymouth, at the same time their Lordships received the charge against you, have all of them been chosen by their

Lordships to be at Portsmouth in a situation to sit at your trial; and I am in return to acquaint you, that their Lordships have ordered the Flag officers who were commanding at the above-mentioned places, at the time they received the charge against you, to repair immediately to Portsmouth, and hoist their flags. I have the honour to be, Sir,

Your most obedient, humble servant,

P. H. STEPHENS.

Honble. Admiral Keppel,
Portsmouth.

Ph. Stephens, Esq. in answer to letter from Mr. Josh. Sharp.

S I R, Admiralty-Office, 5th Jan. 1779.

Having laid before my Lords Commissioners of the Admiralty a letter from Mr. Josh. Sharpe, dated the first instant, desiring, on your behalf, and as your agent, that all the letters written by you to me, as Secretary of the Admiralty, from the time when you received your first instructions to the date of his said letter, may be produced at your trial, in order that such of them may be produced in evidence as you may think fit to call for; I have, in obedience to their Lordships commands, ordered Mr. Robinson, one of my clerks, to attend at Portsmouth, on the 7th instant, with the said letters, accompanied with a schedule thereof, attested by me.

I am, with great regard, Sir,

Your most obedient, humble servant,

P. H. STEPHENS.

Honble. Augustus Keppel,
Admiral of the Blue, Portsmouth.

S I R, Portsmouth, 6th Jan. 1779.

In answer to your letter proposing an exchange of lists of witnesses with Sir Hugh Palliser, I have only to remind you of what I mentioned to you this morning, that I was determined to avoid every degree of intercourse with that gentleman, therefore beg to decline saying any thing upon that subject.

I am, Sir, your very humble servant,

A. KEPPEL.

Geo. Jackson, Esq.

S I R, Portsmouth, 9th Jan. 1779.

Herewith I send you, for the information of the Court, three books of the sailing and fighting instructions, with the alterations and additions I have made to them, and likewise three books of my additional signals and instructions.

I am, Sir,

Your most obedient, humble servant,

A. KEPPEL.

George Jackson, Esq.

Judge-Advocate.

S I R, Court Room, Portsmouth,
18th Jan. 1779.

Rear-Admiral Roddam, one of the members of the Court, having been taken ill last night, and continuing much indisposed, which will prevent his doing any business to-day; the Court, therefore, having thought it most advisable to adjourn, and it stands adjourned till to-morrow morning at ten o'clock accordingly. I am, with consideration,

Sir, your most obedient,

and most humble servant,

GEO. JACKSON.

The Honble. Admiral Augustus Keppel.

S I R, Portsmouth, 18th Jan. 1779.

I am extremely sorry for Rear-Admiral Roddam's indisposition, which, in the judgment of the Court, makes a sitting to adjourn necessary; I only submit to the wisdom of the Court, whether it

it is not advisable that I should be present when the Court assembles and adjourns; because in a case of criminal prosecution it may be objected, that nothing ought to be done in the absence of the prisoner.—If this should be the opinion of the Court, I am ready and desirous to attend them immediately. I am, Sir,

Your very humble servant,
To the Judge Advocate. A. KEPPEL.

S I R, Portsmouth, 13 Feb. 1779.

I received last night by a messenger an order from the Lords Commissioners of the Admiralty, dated yesterday, setting forth that whereas the Judge Advocate of his Majesty's fleet had in a letter of the 11th inst. transmitted to their Lordships the sentence of the Court Martial, which has been held at Portsmouth for my trial upon a charge exhibited against me by Vice-Admiral Sir Hugh Palliser, by which sentence I am unanimously and honourably acquitted of the several articles contained in the said charge; and that they do therefore thereby take off the suspension under which I was laid by their Lordships order of the 31st of December last, and directing and requiring me to hoist my flag on board his Majesty's ship Victory, and to resume the employment of Commander in Chief of a squadron of his Majesty's ships employed, and to be employed in the Channel, Soundings, or wherever else his Majesty's service may require. I have in consequence ordered Capt. Faulkner to cause my flag to be hoisted this morning on board the Victory, and have resumed the command of such ships of the squadron that were under my orders, now at Spithead and in Portsmouth harbour, that are not under any particular directions from their Lordships.—I received by the same messenger your letter signifying that their Lordships are pleased to give me leave of absence from my duty, to attend my private affairs, and likewise another letter of the same date.

I am, Sir, your most obedient
and very humble servant,
Ph. Stephens, Esq. A. K.

Extract of a letter from Sir Hugh Palliser to Admiral Keppel, dated Formidable, at sea, 9th of October 1778.

" These prizes coming in our way are not unacceptable, but I know you would rather meet the French Fleet.

" I am with the greatest regard and respect,
" dear Sir, your most obedient humble
" servant,

" HUGH PALLISER."

Extract of a letter from Sir Hugh Palliser to Admiral Keppel, dated Pallmall, 3d Nov. 1778.

" I think myself much intitled to have my conduct on the day we engaged the French Fleet justified by you, Sir, as Commander in Chief, from those foul aspersions, that I confess I have been expecting your offer to do it; I have waited for your coming to town to ask it; being now informed of your arrival, I lose no time in desiring you will contradict those scandalous reports that have been propagated as aforementioned by publishing in your own name the inclosed paper, which I have the honour to inclose herewith, or something to that effect that may be more agreeable to you, and as may be agreed on, if you will permit me the honour to wait on you to-morrow morning.

" I must beg the favour of your speedy answer, that my honour and reputation may not be farther wounded by delays.

" I am very respectfully, Sir,

" Your very obedient, humble servant,
" HUGH PALLISER."

To the Honourable
Admiral Keppel, &c.

" Having seen a paragraph in the Morning Intelligencer of the 5th of last month, highly reflecting on the conduct of Vice-Admiral Sir Hugh Palliser, on the 27th of July last, when the Fleet under my command engaged the French Fleet; and the Vice-Admiral having informed me that reports to the same purpose have been propagated by some of the Officers of the Victory, I think it necessary, in justice to Sir Hugh Palliser, to publish to the world, that his conduct on that day was in every respect proper, and becoming a good Officer; and I further declare, that when I made the signal in the evening for the ships to windward to bear down into my wake, and afterwards for particular ships of Sir Hugh's division to do so, he repeated those signals properly, and that the calling his and Vice-Admiral Sir Robert Harland's division into my wake in the evening, was not for the purpose of renewing the battle at that time, but to be in readiness for it in the morning, that in obedience to the said signals such of the ships of Sir Hugh Palliser's division as were in condition for it, did immediately bear down, as did the rest so soon as they were able, so that Sir Hugh Palliser and his whole division were all in my wake accordingly the next morning before day—light ready for engaging."

ORDER

ORDER OF BATTLE, as it stood 27th July 1778.

LINE OF BATTLE, 27th July 1778.

The Monarch to lead with the Starboard, and the Ramillies with the Larboard Tacks on board.

Frigates.	Rates.	Ships.	Commanders.	Guns	Men.	Division.	
Fox, 28 Guns,	3	Monarch,	Captain Rowley,	74	600	Vice-Admiral of the Red.	
		Hector,	Sir John Hamilton, Bart.	74	600		
		Centaur,	Captain Cosby,	74	600		
		Exeter,	Captain Nott,	64	500		
	2	Duke,	Captain Brereton,	90	750		
		Queen,	Sir Robert Harland, Bart.	90	772		
			Captain Prescott,	74	600		
	3	Shrewsbury,	Captain Ross,	74	600		
		Cumberland,	Captain Peyton,	74	600		
		Berwick,	Hon. Keith Stewart,	74	600		
		Stirling Castle,	Sir Charles Douglas, Bart.	64	500		
Arethusa, } to repeat 32 Guns, } Signals,		Courageux,	Right Hon. Lord Mulgrave,	74	600	Admiral of the Blue and Com- mander in Chief, &c.	
		Thunderer,	Hon. Captain Walsingham,	74	600		
		Vigilant,	Captain Kingsmill	64	500		
	2	Sandwich,	Captain Edwards,	90	750		
	3	Valiant,	Hon. John Leveson Gower,	74	650		
			Hon. AUGUSTUS KEPPEL,	100	894		
	1	VICTORY,	Rear Admiral Campbell,				
			1st Captain to the Admiral,				
			Captain Faulknor,				
	Proserpine, 28 G.	3	Foudroyant,	Captain Jervis,	80		650
Vulcan, } Fire- Pluto, } ships,	2	Prince George,	Sir John Lindsay, K. B.	90	750		
	3	Bienfaisant,	Captain Macbride,	64	500		
		Vengeance,	Captain Clements,	74	600		
Milford, 28 Guns,		Worcester,	Captain Robinson,	64	500	Vice-Admiral of the Blue.	
		Elizabeth,	Hon. Frederick Maitland,	74	600		
		Defiance,	Captain Goodall,	64	500		
		Robuste,	Captain Hood,	74	600		
	2	Formidable,	Sir Hugh Palliser, Bart.	90	772		
			Captain Bazeley,	90	750		
		Ocean,	Captain Laforey,	90	750		
	3	America,	Right Hon. Lord Longford,	64	500		
		Terrible,	Sir Richard Bickerton, Bart.	74	600		
		Egmont,	Captain Allen,	74	600		
		Ramilles,	Captain Digby,	74	600		



